

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7314

United States Court of Appeals

FOR THE SECOND CIRCUIT

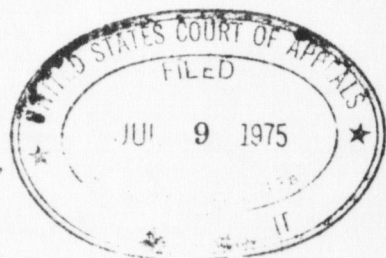
MICHAEL JUDGE,

Plaintiff-Appellant,

v.

CITY OF BUFFALO,

Defendant-Appellee.



APPEAL FROM THE JUDGMENT OF THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT OF NEW YORK AT
CIVIL ACTION No. 1973-307.

JOINT APPENDIX

FRANCIS X. MURPHY,
Attorney for Appellant,
914 Abbott Road,
Buffalo, New York 14220.

LESLIE G. FOSCHIO,
Corporation Counsel,
City of Buffalo,
Attorney for Appellee,
City Hall,
Buffalo, New York 14202.

PAGINATION AS IN ORIGINAL COPY

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[illegible]

DATE	PROCEEDINGS	Date Ord Judg: not
1973		
June 21	Filed Complaint	
21	Issued Summons & 1 copy	
21	JS 5 made	
29	Filed Summons & Mar. Ret on S&C served 6/27/73	
July 16	" Answer	
19	" Pltff's Demand for Jury Trial	
19	" Pltff's Notice to Produce	
1974		
Apr. 21	Filed notice of motion for an order dismissing complaint on ground that Ct. lacks jurisdiction ret. 4-15-74 adj to 5-28-74 for oral argument. adj. 6-10-74	
May 24	Filed Pltffs. answering affidavit in regard to summary judgment in favor of deft.	
June 10	Report due. Submitted. Pltff. withdraws demand for jury trial.	
July 31	Filed Order that deft. file affidavit with appropriate exhibits attached pursuant to Rule 56 FRCP not later than 7/29/74 and pltf. file responding affidavit with exhibits not later than 8/26/74 and court will set a time for oral argument on 9/16/74 - Curtin, DJ (notice & cy. to Messrs. Murphy and Manguso)	F-15
29	Filed by deft. affidavit of Dr. George Birchette.	
29	Filed by Deft. affidavit of William J. Cleary.	
29	Return date for briefs adj. to 8-26-74 adj. to 9-16-74 adj. to	
Sept. 16	Filed 8-29-74 at 2:00pm for oral argument.	
Oct. 7	Filed Pltffs. brief in opposition to motion for summary judgment against him & in support of summary judgment for him.	
Nov. 25	Oral argument set for 12/2/74 at 2 p.m. adj. 12-16-74 Submitted.	
1975		
Apr. 23	Filed order granting deft. motion for summary judgment, dismissing the action-Curtin, DJ Notice & copies to Francis Murphy & Leslie Foschio	F-1
23	JS 6 made	
23	Filed judgment dismissing the action.-Clerk Notice & copies to Francis Murphy & Leslie Foschio	F-163
May 20	" Pltff's Notice of Appeal (copy mailed to Mr. Foschio and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Murphy)	
June 9	Original papers, docket entries & Clerk's certificate mailed to Clerk, CCA	

CLOSED

Complaint.

U.S. District Court
Western District of New York

Michael Judge
20 Shenandoah Road
Buffalo, New York

Plaintiff

Civil Action No. 1973-307

v.

Complainant

City of Buffalo
City Hall
Buffalo, New York

Defendant

Plaintiff, by Francis X. Murphy, his attorney complaining
of defendant for his complaint alleges:

First Cause of Action

1. Plaintiff is employed by the defendant, City of Buffalo, in its police department as a Community Peace Officer under a program funded in part by funds received by the City of Buffalo from the United States Department of Justice under the latter's Law Enforcement Assistance Administration and has been so employed as a Community Peace Officer since December 14, 1972.

2. In the regular course of that Community Peace Officer program, upon completion, thereof by plaintiff which is scheduled to occur on July 1, 1973, plaintiff will become entitled to appointment as a regular City of Buffalo Policeman.

3. On or about June 8, 1973 the City of Buffalo, via its Municipal Civil Service Commission, made a final determination that plaintiff not be made a policeman on July 1, 1973 for the sole reason that plaintiff is ^{Two} one inch shorter than the five foot nine inch minimum height for a City of Buffalo Policeman.

Complaint.

4. The foregoing determination, made under color of a Municipal ordinance or regulation, deprives the plaintiff of a right, privilege or immunity secured to him by the Constitution of the United States of America and Acts of Congress providing for equal rights of citizens of the United States of America and is contrary to guidelines, implementing these constitutional and statutory rights, issued by the United States Department of Justice on March 9, 1973, Federal Register of March 9, 1973 page 6415, effective that date.

5. The position of Buffalo Policeman is fully protected by the New York State Constitution provisions for Civil Service and state and municipal statutes and ordinances supplemental thereto, which position has an annual salary of \$9200 and is for all practical purposes a lifetime job, the value of which is in excess of \$10,000.

6. Jurisdiction of this court is invoked under 28 U.S.C. 1343(3) and 28 U.S.C. 1331.

Second Cause of Action

7. At the time of his appointment plaintiff was five foot nine inches (5'9"), that because of an accident in which he broke both of his legs he is ^{TWO} inch shorter now than he was then; that recovery from this accident has been complete except for the loss of ^{TWO} inch in height; that he passed the police department physical examination conducted in anticipation of his permanent appointment except for the height requirement;

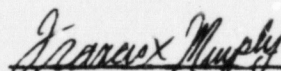
Complaint.

that if the accident had occurred after he had been appointed a full policeman he would have been fully protected against discharge and that his rights are no less because it fortuitously happened before appointment since the contract between plaintiff and City of Buffalo was that he would be appointed a policeman if he satisfactorily completed the Community Peace Officer Program.

Third Cause of Action

8. At the time of his appointment as a police Community Peace officer he became entitled as of right to an appointment as a policeman upon satisfactory service. The contract between the City and the U.S. prevented the City from arbitrarily not appointing him. This is a right cognizable in federal court.

WHEREFORE plaintiff demands judgment against defendant that he be appointed by the City of Buffalo a policeman on July 1, 1973 that plaintiff recover from the defendant judgment for all salary and emoluments of a policeman from and after July 1, 1973 and that he have such other and further relief as may be necessary and proper to grant to him complete relief.


Francis X. Murphy
Attorney for Plaintiff
914 Abbott Road
Buffalo, New York

Answer.

UNITED STATES DISTRICT COURT
Western District of New York

MICHAEL JUDGE
20 Shenandoah Road
Buffalo, New York,

Plaintiff

CIVIL ACTION NO. 1973-307

v.

ANSWER

CITY OF BUFFALO
City Hall
Buffalo, New York,

Defendant

The defendant by its Corporation Counsel,
ANTHONY MANGUSO, for its Answer to the plaintiff's Complaint,
alleges that it:

1. Admits the allegations set forth in paragraph "1" of the plaintiff's Complaint, except that the plaintiff is not now an employee of the City.
2. Admits the allegations set forth in paragraph "2" of the plaintiff's Complaint, except that appointment to the Police Force is conditioned upon passing a further medical examination.
3. Denies the allegations set forth in paragraph "3", "4", "7" and "8" of the plaintiff's Complaint.
4. Admits the allegations set forth in paragraph "5" of the plaintiff's Complaint.
5. Has no knowledge regarding the allegations set forth in paragraph "6" of the plaintiff's Complaint.

Answer.

FOR A FIRST DEFENSE:

6. The Complaint fails to state a claim upon which relief can be granted.

WHEREFORE, the defendant demands judgment against the plaintiff dismissing his Complaint together with the costs and disbursements of this action.

DATED: BUFFALO, NEW YORK
July 13, 1973

s/ ANTHONY MANGUSO

ANTHONY MANGUSO,
Corporation Counsel,
Attorney for the
Defendant,
CITY OF BUFFALO,
Office and P.O. Address
1100 City Hall
No. 65 Niagara Square
Buffalo, New York 14202

Motion to dismiss under Rule 12.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MICHAEL JUDGE
20 Shenandoah Road
Buffalo, New York

Plaintiff

v.

CITY OF BUFFALO
City Hall
Buffalo, New York

Defendant

NOTICE OF
MOTION

CIV. ACTION
No. 1973-307

Upon the annexed Complaint, the Answer, the Affidavit of Anthony Manguso, sworn to the 29th day of March, 1974, and the Affidavit of Anthony J. Colucci, sworn to the 13th day of March, 1974, the undersigned will move the Court as follows:

(1) For an Order pursuant to Rule 12 (b) and (h) of the Federal Rules of Civil Procedure dismissing the Complaint upon the ground that the Court lacks jurisdiction over the subject matter of the claims asserted therein; and

(2) In the alternative, for an Order pursuant to Rule 39 (a) (2) of the Federal Rules of Civil Procedure striking the Plaintiff's demand for a jury trial.

DATED: Buffalo, New York
March 29, 1974

ANTHONY MANGUSO
ANTHONY MANGUSO,
Corporation Counsel,
Attorney for Defendant,
1100 City Hall
No. 65 Niagara Square
Buffalo, New York 14202

Supporting Affidavit, Anthony Manguso.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MICHAEL JUDGE
20 Shenandoah Road
Buffalo, New York

Plaintiff

v.

CITY OF BUFFALO
City Hall
Buffalo, New York

Defendant

A F F I D A V I T

CIV. ACTION
No. 1973-307

STATE OF NEW YORK)
COUNTY OF ERIE : SS.
CITY OF BUFFALO)

ANTHONY MANGUSO, being duly sworn, deposes and says:

1. I am the Corporation Counsel of the City of Buffalo, and, as such, I am familiar with the facts and circumstances surrounding the claims asserted by the Plaintiff in his Complaint.

2. The Plaintiff alleges in his Third Cause of Action that there was a contract between the City and the Federal Government which created a Community Peace Officer Program and which "prevented the City from arbitrarily not appointing him." (Complaint, par. 8)

3. There never was any such contract between the City and the Federal Government. The Community Peace Officer Program was set up under an agreement between the City and the New York State Office of Crime Control Planning. A copy

Supporting Affidavit, Anthony Manguso.

of this agreement is annexed hereto and marked Exhibit "1". Although the funds which the State granted to the City were furnished by the Law Enforcement Assistance Administration of the United States Department of Justice, the award itself was denominated in the contract as a grant from the State of New York (par. 1), and the State was to be responsible to LEAA for the proper administration of the program.

4. The operation of the program is described in Attachment "A" of the Exhibit. The qualifications and standards necessary to qualify as a Community Peace Officer are set forth in paragraphs numbered 2 and 5; the training and the duties of candidates in paragraph 6; and the procedure for appointment as a Patrolman in paragraph 7. Candidates come under the Rules of the Civil Service Commission (paragraph 7, by implication), and "shall be subject to the same physical and moral character requirements as exist for regular Patrolmen." (paragraph 2).

5. The Plaintiff was not appointed to the position of Patrolman because the Municipal Civil Service Commission refused to certify him as eligible for appointment based upon its determination that he was not physically qualified for the job (see accompanying affidavit of Anthony J. Colucci, (paragraphs 4-7)).

6. The Plaintiff has asserted that Federal

Supporting Affidavit, Anthony Manguso.

jurisdiction exists under 28 U.S.C. 1343 (3) (redressing a State deprivation of equal rights secured by the Constitution or by Congress), and 28 U.S.C. 1331 (case arising under the Federal Constitution, laws or treaty).

7. The Plaintiff has challenged the Commission's determination about his physical condition and his ability to do a Patrolman's job, contending that it is arbitrary. However, this does not constitute a deprivation of equal rights secured by the Federal Constitution or by an Act of Congress, nor does it constitute the violation of a contractual obligation, Federal or otherwise. Consequently, the Court lacks subject matter jurisdiction of this action.

S/ANTHONY MANGUSO
ANTHONY MANGUSO

Subscribed and sworn to before
me this 29th day of March, 1974

S/JAMES J. McLOUGHLIN
Commissioner of Deeds, Buffalo, N.Y.
My commission expires 12/31/74

JJMcL/hg

Supporting Affidavit, Anthony Colucci.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

MICHAEL JUDGE
20 Shenandoah Road
Buffalo, New York

Plaintiff

v.

CITY OF BUFFALO
City Hall
Buffalo, New York

Defendant

A F F I D A V I T

CIV. ACTION
No. 1973-307

STATE OF NEW YORK)
COUNTY OF ERIE : SS.
CITY OF BUFFALO)

ANTHONY J. COLUCCI, being duly sworn,

deposes and says:

1. I am the President of the Municipal Civil Service Commission of the City of Buffalo, and, as such, I am familiar with the facts and circumstances surrounding the claims asserted by the Plaintiff in his Complaint.

2. The Plaintiff alleges in his First Cause of Action that the Commission refused to certify him as being eligible for appointment to the position of Patrolman in the Buffalo Police Force because he was 2" shorter than the minimum height which the Commission had established, i. e., 5' 9", and that this refusal violated his rights under the United States Constitution and Acts of

Supporting Affidavit, Anthony Colucci.

Congress and was also contrary to certain guidelines issued by the United States Department of Justice on March 9, 1973 (Federal Register March 9, 1973, p. 6415).

3. The Plaintiff alleges in his Second Cause of Action that he met the minimum height requirements at the time of his appointment as a Community Peace Officer and that except for an accident which reduced his height by approximately 2" he would have otherwise qualified for appointment to the position of Patrolman under the Community Peace Officer Program.

4. The Commission has refused to certify the Plaintiff as eligible for appointment to the position of Patrolman because he has not met the medical and physical agility standards established by the Commission for all candidates for the position of Patrolman. This refusal has not been based upon the Plaintiff's height and his failure to qualify under the former minimum height requirement of 5' 9" (it is now 5' 7") has not been or will it be urged as a defense in this action.

5. The Plaintiff was appointed a Community Peace Officer on December 16, 1971. On February 27, 1972 he was involved in an off-duty accident when he was struck by an automobile while he was crossing the street. His attending physician stated that he had sustained a comminuted displaced fracture of the mid shafts of the right tibia and fibula and a displaced fracture of the distal left tibia and fibula. He performed reductions on both legs. Later he found that

Supporting Affidavit, Anthony Colucci.

there had been some shortening and slight displacement at both fracture sites.

6. The examining physician for the Commission recommended that the Plaintiff be rejected as a candidate for the position of Patrolman because of his injuries. Subsequent to the commencement of this action, the Plaintiff failed to pass an agility test which he had successfully passed prior to his accident.

7. It was on the basis of the above facts that the Commission refused to certify the Plaintiff as eligible for the position of Patrolman.

S/ ANTHONY J. COLUCCI
ANTHONY J. COLUCCI

Subscribed and sworn to before me
this 13th day of March, 1974.

s/ ANTHONY S. KOWALSKI
~~Commissioner of Deeds, Buffalo, N.Y.~~
Notary Public Anthony S. Kowalski
Erie County - New York State
Expires 3/30/74

Decision Directing Further Affidavits.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MICHAEL JUDGE
20 Shenandoah Road
Buffalo, New York

Plaintiff

-vs-

Civil 1973-307

CITY OF BUFFALO
City Hall
Buffalo, New York

Defendant

On June 10, 1973, the court heard oral argument on defendant's motion for summary judgment. After considering the affidavits, exhibits and briefs filed to date, and after considering the remarks of counsel at oral argument, the court deems that further filing of affidavits and exhibits is required to complete the record. Matters referred to in the briefs and at oral argument have not been covered by a factual statement in the affidavits presently filed.

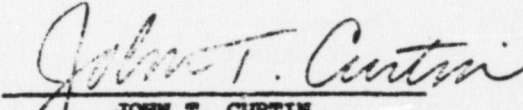
The parties are directed to file affidavits with appropriate exhibits attached pursuant to Rule 56 of the Federal Rules of Civil Procedure, in accordance

Decision Directing Further Affidavits.

-2-

with the following schedule. Defendant is to file its affidavit not later than July 29, 1974. Plaintiff is to file his responding affidavit not later than August 26, 1974. If the parties desire, they may file and exchange briefs on September 16, 1974. The court shall meet with the parties at 11:00 a.m. on that date and set a time for oral argument, if necessary.

So ordered.


JOHN T. CURTIN
United States District Judge

DATED: July 3, 1974

Affidavit of Dr. George Birchette.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MICHAEL JUDGE
20 Shenandoah Road
Buffalo, New York,

Plaintiff,

vs.

CITY OF BUFFALO
City Hall
Buffalo, New York,

Defendant.

A F F I D A V I T

CIVIL NO. 1973 - 307

STATE OF NEW YORK)
COUNTY OF ERIE : SS:-
CITY OF BUFFALO)

DR. GEORGE BIRCHETTE, being duly sworn, deposes and
says:

1. I am a physician, duly licensed by the State
of New York to practice medicine within this State.

2. I have been the examining physician for the
Buffalo Civil Service Commission from October, 1971 to November,
1972 on an as needed basis, and from November, 1972 to the pre-
sent as the Commission's regular examiner.

3. I examined the plaintiff on January 24, 1973
when he underwent his second physical examination as required by
the Commission Rules. Although required to do so, he did not at
that time disclose to me that he had been involved in an auto-
mobile accident and that he had sustained certain leg fractures
(see answer to question No. 2 on Exhibit #1 attached hereto).

4. On or about June 1, 1973, the Commission called
to my attention the facts of the plaintiff's accident and injuries,
and submitted to me for my review the hospital reports (Exhibit

Affidavit of Dr. George Birchette.

#2 annexed hereto) and the medical reports of the attending physician (Exhibit No. 3 annexed hereto).

5. Based upon my evaluation of these various reports, I recommended to the Commission on or about June 1, 1973 that the plaintiff be rejected as a candidate for the position of Patrolman because of the nature of the injuries which he had sustained in his automobile accident of February 27, 1972.

S/ GEORGE BIRCHETTE

Subscribed and sworn to before me
this 19th day of July, 1974.

S/ WILLIAM J. CLEARY
Commissioner of Deeds in and for
The City of Buffalo, New York
My Commission expires 12/31/74

WASSERMAN

URINALYSIS

X-RAY EXAMINATION

STRENGTH TEST

- ```

1. GRIP
 L
2. KNEE
3. PUSH
4. PULL
5. BACK
6. LEG

```

POSITION. COMMUNITY CARES OFFICER  
NAME MICHAEL D. JILKE  
ADDRESS 20 SHERWOOD ROAD  
DATE OF BIRTH 5-3-44 AGE 21

**MEDICAL EXAMINATION**

HEIGHT 5 FT. 7 IN.

WEIGHT 171 LBS

#### GENERAL APPEARANCE

ARMS & LEGS

## HANDS & FEET

## SKIN

## MUSCLES

## GENITALS

### INGUINAL REGIONS

## RECTUM & ANUS

BRAIN &amp; NERVOUS SYSTEM

## PULSE

HEART &amp; CIRCULATION

## LUNGS

**WAIST**

INSPIRATION

## NOSE

MOUTH

EYES

### COLOR TEST

REMARKS (NOTE CAUSE OF REJECTION)

## RESULT

DATE 10-1-68



## Medical reports &amp; hospital records.

## MEDICAL HISTORY

NOTE: APPLICANTS WILL FILL IN THE FOLLOWING:

1. WHAT ILLNESSES HAVE YOU HAD IN THE LAST FIVE YEARS? NONE2. WHAT INJURIES OR SURGICAL OPERATIONS HAVE YOU HAD? GIVE DETAILS. NO3. HAVE YOU EVER DRAWN WORKMEN'S COMPENSATION? NO

WHERE EMPLOYED WHEN INJURY WAS SUSTAINED? \_\_\_\_\_

NATURE OF INJURY \_\_\_\_\_

DATE OF INJURY \_\_\_\_\_

DECISION AND AWARD OF COMPENSATION \$ \_\_\_\_\_

IS CASE CLOSED? \_\_\_\_\_

4. HAVE EITHER OF YOUR PARENTS, BROTHERS, OR SISTERS HAD? NODIABETES NO NERVOUS BREAKDOWN NOEPILEPSY NO TUBERCULOSIS NOMENTAL DISEASE NO

5. INDICATE BY A CHECK MARK (✓) THE FOLLOWING CONDITIONS YOU HAVE HAD:

|                             |                         |                       |
|-----------------------------|-------------------------|-----------------------|
| ( ) ARTHRITIS               | ( ) MALARIA             | ( ) RHEUMATISM        |
| ( ) ASTHMA                  | ( ) HEMORRHOIDS         | ( ) RUPTURE           |
| ( ) CANCER                  | ( ) HIGH BLOOD PRESSURE | ( ) SCARLET FEVER     |
| ( ) DIABETES                | ( ) KIDNEY DISEASE      | ( ) SPITTING OF BLOOD |
| ( ) DISCHARGE FROM EAR      | ( ) MENTAL DISEASE      | ( ) SYPHILIS          |
| ( ) EPILEPSY OR CONVULSIONS | ( ) NERVOUS BREAKDOWN   | ( ) TUBERCULOSIS      |
| ( ) GONORRHEA               | ( ) PLEURISY            | ( ) ULCER OF STOMACH  |

6. HAVE YOU EVER TAKEN AN EXAMINATION GIVEN BY THE MUNICIPAL CIVIL SERVICE COMMISSION

OF BUFFALO? YES IF YES, LIST DATES AND TITLES OF EXAMINATION:

DATE

TITLE

1-7-717. HAVE YOU EVER BEEN REJECTED FOR LIFE INSURANCE? NO

8. OUTLINE THE TYPE OF WORK PERFORMED BY YOU IN THE LAST FIVE YEARS:

DEC. 17, 1971 COMMUNITY PEARL OFFICERS  
TILL PRESENT1-24-73  
DATEDB. D. D. D.  
SIGNATURE OF APPLICANT

## Medical reports &amp; hospital records.

565 Abbott Road  
Buffalo, N.Y. 14220

## DISCHARGE SUMMARY

|         |                         |            |                      |
|---------|-------------------------|------------|----------------------|
| Name    | MICHAEL JUDGE           | Case No.   | 2144-72              |
| Address | 20 Shenandoah Road      | Admitted   | 2-27-72              |
|         | Buffalo, New York 14220 | Discharged | 4-25-72              |
|         |                         | Physician  | S. LOGANATHAN, M. D. |

**Final Diagnosis:** Cerebral concussion.  
Airway obstruction.  
Cardiac contusion.  
Fracture thoracic vertebrae, upper.  
Comminuted fractures of both tibiae.

**Consultations:** Drs. Haque, Villacorta and Hoffman.

This 23-year-old white male was hit by an automobile while he was crossing the street and was admitted through the Emergency Room unconscious.

Physical examination revealed obvious fractures of both ankles, lower legs. The patient was deeply comatose but adequate airway was maintained. The abdomen was spastic in the upper quadrants and bowel sounds were absent. Peritoneal tap was negative.

**Lab Studies:** Admission hematocrit was 42.5%. Innumerable studies were performed, for chemistry and bacteriology please refer to the chart. Electrocardiogram revealed multiple PVCs, sinus tachycardia and non-specific ST-T changes suggestive of cardiac contusion. Multiple echoencephalograms were within normal limits. X-ray of the left clavicle and sternoclavicular joint was normal. X-ray of the cervical spine was normal. Lumbo-dorsal spine revealed compression fracture of upper dorsal vertebrae. Lumbar spine normal. Pelvis and hips normal. X-ray of the chest normal. Abdomen showed increased gas in the stomach, otherwise normal. Right leg showed comminuted fracture of the tibia and fibula at the junction of middle and distal thirds. Left ankle showed tri-malleolar fracture.

**Hospital Course:** IV fluids were started and adequate airway was maintained. Vital signs were stable but his temperature started rising within a few hours of admission and he was treated symptomatically to which he responded. Patient appeared to be comatose, had difficulty handling the bronchial secretions and keeping adequate airway. Therefore, on 3-1-72 tracheostomy was done under general anesthesia which he tolerated well. Reduction of both lower extremities and application of casts was performed by Dr. Hoffman. The patient was constantly monitored for cardiac actions. Patient developed PVCs and tachycardia and he was started on Digitalis and was placed on Quinidinc. Gradually his cardiac status improved and his temperature subsided. Patient gradually regained his consciousness. On 3-17-72 closed reduction of both tibial fractures were done under spinal anesthesia and long leg cast on the right side and short leg cast on the left side were applied. On 4-12-72 the left leg cast was removed. The patient was ambulated. At the time of discharge patient had no neurological deficits. He was discharged on 4-25-72 to be followed in the office.

SL/rjm  
d. 6-5-72 t. 6-20-72

S. LOGANATHAN, M. D.

DISCHARGE SUMMARY



המחלקה לבריאות הציבור

## Medical reports &amp; hospital records.

JUDGES, ...  
 20 SHENANDOAH RD., EFLD., NY  
 LEGATMAN STR. - HAGUE  
 22 MERCY HOSPITAL

## CONSULTATION SHEET

Case No.

Name

Date

Room No.

4/27/72 23940 was hit by a car. Brought  
 to ER in unconscious condition. In  
 both tibia & fibula.

Exam. unconscious. responds to pain  
 by moving all extremities. Pupils  
 equal & react light. eyes move  
 conjugately in all directions.  
 No facial leg. No tenderness of  
 neck. Humeral D fracture/accrusion  
 region (comminuted).

Abdominal tap (A Legmanthar)

negative

Resp. - central cyanosis

Ref. - water to 1 IC pressure

low fever

Stable in

*[Signature]*  
 H. H. H.



## CONSULTATION

Case Number

Case Number \_\_\_\_\_  
Name Michael Judge

JUDGE, MICHAEL 6412

20 SHENANDOAH RD. BELO NY

LOGANATHAN SER. HADLEY

23 YR. 02144-72

### Consulting Physician

Referring Physician

Dr. Hoffman

Referring Physician  
Dr. J. J. J. J. J.

**HISTORY, FINDINGS AND RECOMMENDATIONS:**

HISTORY, FINDINGS AND RECOMMENDATIONS: 23 yoa. old white man  
struck by a car - 2/27/72. sustained  
commotio fr. right chest & lateral dislocation  
of L thumb & pinkie. closed reduction  
done. immobilize in admiss - &  
remain in same - 1 - 4

remains the same  
PE was now gone

BP 150/76 RR 180/6 V 03

ecce magis est stulticia

*Eup. nivalis* equal soil delatit.  
black 7. light.

Christ-geheimlich, Amen

Harvest - good tone, mild

Occasional small fish still  
live in the salt water.

1st - 2nd 5th 6th 7th 8th 9th 10th 11th 12th 13th 14th 15th 16th 17th 18th 19th 20th 21st 22nd 23rd 24th 25th 26th 27th 28th 29th 30th 31st 32nd 33rd 34th 35th 36th 37th 38th 39th 40th 41st 42nd 43rd 44th 45th 46th 47th 48th 49th 50th 51st 52nd 53rd 54th 55th 56th 57th 58th 59th 60th 61st 62nd 63rd 64th 65th 66th 67th 68th 69th 70th 71st 72nd 73rd 74th 75th 76th 77th 78th 79th 80th 81st 82nd 83rd 84th 85th 86th 87th 88th 89th 90th 91st 92nd 93rd 94th 95th 96th 97th 98th 99th 100th 101st 102nd 103rd 104th 105th 106th 107th 108th 109th 110th 111th 112th 113th 114th 115th 116th 117th 118th 119th 120th 121st 122nd 123rd 124th 125th 126th 127th 128th 129th 130th 131st 132nd 133rd 134th 135th 136th 137th 138th 139th 140th 141st 142nd 143rd 144th 145th 146th 147th 148th 149th 150th 151st 152nd 153rd 154th 155th 156th 157th 158th 159th 160th 161st 162nd 163rd 164th 165th 166th 167th 168th 169th 170th 171st 172nd 173rd 174th 175th 176th 177th 178th 179th 180th 181st 182nd 183rd 184th 185th 186th 187th 188th 189th 190th 191st 192nd 193rd 194th 195th 196th 197th 198th 199th 200th 201st 202nd 203rd 204th 205th 206th 207th 208th 209th 210th 211th 212th 213th 214th 215th 216th 217th 218th 219th 220th 221st 222nd 223rd 224th 225th 226th 227th 228th 229th 230th 231st 232nd 233rd 234th 235th 236th 237th 238th 239th 240th 241st 242nd 243rd 244th 245th 246th 247th 248th 249th 250th 251st 252nd 253rd 254th 255th 256th 257th 258th 259th 260th 261st 262nd 263rd 264th 265th 266th 267th 268th 269th 270th 271st 272nd 273rd 274th 275th 276th 277th 278th 279th 280th 281st 282nd 283rd 284th 285th 286th 287th 288th 289th 290th 291st 292nd 293rd 294th 295th 296th 297th 298th 299th 300th 301st 302nd 303rd 304th 305th 306th 307th 308th 309th 310th 311th 312th 313th 314th 315th 316th 317th 318th 319th 320th 321st 322nd 323rd 324th 325th 326th 327th 328th 329th 330th 331st 332nd 333rd 334th 335th 336th 337th 338th 339th 340th 341st 342nd 343rd 344th 345th 346th 347th 348th 349th 350th 351st 352nd 353rd 354th 355th 356th 357th 358th 359th 360th 361st 362nd 363rd 364th 365th 366th 367th 368th 369th 370th 371st 372nd 373rd 374th 375th 376th 377th 378th 379th 380th 381st 382nd 383rd 384th 385th 386th 387th 388th 389th 390th 391st 392nd 393rd 394th 395th 396th 397th 398th 399th 400th 401st 402nd 403rd 404th 405th 406th 407th 408th 409th 410th 411th 412th 413th 414th 415th 416th 417th 418th 419th 420th 421st 422nd 423rd 424th 425th 426th 427th 428th 429th 430th 431st 432nd 433rd 434th 435th 436th 437th 438th 439th 440th 441st 442nd 443rd 444th 445th 446th 447th 448th 449th 450th 451st 452nd 453rd 454th 455th 456th 457th 458th 459th 460th 461st 462nd 463rd 464th 465th 466th 467th 468th 469th 470th 471st 472nd 473rd 474th 475th 476th 477th 478th 479th 480th 481st 482nd 483rd 484th 485th 486th 487th 488th 489th 490th 491st 492nd 493rd 494th 495th 496th 497th 498th 499th 500th 501st 502nd 503rd 504th 505th 506th 507th 508th 509th 510th 511th 512th 513th 514th 515th 516th 517th 518th 519th 520th 521st 522nd 523rd 524th 525th 526th 527th 528th 529th 530th 531st 532nd 533rd 534th 535th 536th 537th 538th 539th 540th 541st 542nd 543rd 544th 545th 546th 547th 548th 549th 550th 551st 552nd 553rd 554th 555th 556th 557th 558th 559th 560th 561st 562nd 563rd 564th 565th 566th 567th 568th 569th 570th 571st 572nd 573rd 574th 575th 576th 577th 578th 579th 580th 581st 582nd 583rd 584th 585th 586th 587th 588th 589th 590th 591st 592nd 593rd 594th 595th 596th 597th 598th 599th 600th 601st 602nd 603rd 604th 605th 606th 607th 608th 609th 610th 611th 612th 613th 614th 615th 616th 617th 618th 619th 620th 621st 622nd 623rd 624th 625th 626th 627th 628th 629th 630th 631st 632nd 633rd 634th 635th 636th 637th 638th 639th 640th 641st 642nd 643rd 644th 645th 646th 647th 648th 649th 650th 651st 652nd 653rd 654th 655th 656th 657th 658th 659th 660th 661st 662nd 663rd 664th 665th 666th 667th 668th 669th 670th 671st 672nd 673rd 674th 675th 676th 677th 678th 679th 680th 681st 682nd 683rd 684th 685th 686th 687th 688th 689th 690th 691st 692nd 693rd 694th 695th 696th 697th 698th 699th 700th 701st 702nd 703rd 704th 705th 706th 707th 708th 709th 710th 711th 712th 713th 714th 715th 716th 717th 718th 719th 720th 721st 722nd 723rd 724th 725th 726th 727th 728th 729th 730th 731st 732nd 733rd 734th 735th 736th 737th 738th 739th 740th 741st 742nd 743rd 744th 745th 746th 747th 748th 749th 750th 751st 752nd 753rd 754th 755th 756th 757th 758th 759th 760th 761st 762nd 763rd 764th 765th 766th 767th 768th 769th 770th 771st 772nd 773rd 774th 775th 776th 777th 778th 779th 780th 781st 782nd 783rd 784th 785th 786th 787th 788th 789th 790th 791st 792nd 793rd 794th 795th 796th 797th 798th 799th 800th 801st 802nd 803rd 804th 805th 806th 807th 808th 809th 810th 811th 812th 813th 814th 815th 816th 817th 818th 819th 820th 821st 822nd 823rd 824th 825th 826th 827th 828th 829th 830th 831st 832nd 833rd 834th 835th 836th 837th 838th 839th 840th 841st

Tag - Punkte für  
Kontrollen

14. Les perles

See - Report West X-ray - Abdominal exam  
- B. 11.5 500 - 2 1/2 1/2

Cont. of field -  
watering on road -

1. Consultation

CONSULTATION

## Medical reports &amp; hospital records.

Date 2-27-72

## CONSULTATION

Case Number \_\_\_\_\_

Name Michael Judge

JUDGE, MICHAEL 6412  
 20 SHENANDOAH RD., BFLD., NY  
 LOGANATHAN SER. - HAWK  
 23 YR. 62-44-72

Consulting Physician

D. Hoffman

Referring Physician

D. Loganathan

## HISTORY, FINDINGS AND RECOMMENDATIONS:

23 yr W M was struck by an auto  
 a few hrs. previously seen in the  
 ER by D. Loganathan & D. Vague. Noted  
 to be unconscious & to respond only to  
 painful stimulus. Fractures of both legs  
 explained. Referred to hospital.

PE/

WD, WN 23 yr W M

BP 140/90

P 120

R 24

Skull → traumatic

unconscious but responding to

painful stimulus

Arms → ok

Neck → painful over lower cervical spine

Chest → neg

Pelvis → neg

Thighs → neg

Right &amp; Left → gross deformities of

distal lower extremities

fractures

Hemo-cast of

X-ray → confirmed fractures → C7 not seen but

C1-C6 normal

## IMPRESSION:

① Comminuted, angulated fx distal

1/3 shaft (R) tibia &amp; fibula

② Displaced metaphyseal fx distal

(L) tibia &amp; fibula

③ Possible concussion

## Plan:

Surgical reduction &amp; long leg casts

Hemo-cast of

Thighs

## CONSULTATION

CONSULTATION



## Medical reports &amp; hospital records.

EUGENE E. CISEK, M.D.  
 WALTER D. HOFFMAN, M.D.  
 ORTHOPEDIC SURGERY  
 3630 HARLEM ROAD  
 CHEEKTOWAGA, NEW YORK 14215

837-5203

August 29, 1972

Krieger and Graffeo  
 Attorneys at Law  
 501 Ellicott Square  
 Buffalo, New York 14203

RE: Michael Judge

Attention: Mr. Graffeo

Dear Mr. Graffeo:

Michael Judge was admitted to the South Buffalo Mercy Hospital on 2/27/72. This 23-year-old white male had been struck by an automobile while crossing the street. The patient was admitted to the intensive care unit because of unconsciousness. The patient was being cared for there by Dr. Loganathan and Dr. Haque. I was asked to see the patient in consultation because of fractures of both legs.

Physical examination shortly after admission revealed that the patient was unconscious but responding to painful stimuli. Examination of the legs revealed gross deformity of both lower extremities. Neurovascular status to the feet was intact. X-rays of both lower extremities revealed a comminuted, angulated fracture of the distal one-third of the shaft of the right tibia and fibula. The left leg revealed displaced metaphyseal fractures of the distal left tibia and fibula.

In treatment of this condition closed reductions were performed on both legs and the patient was placed in bilateral long leg plaster casts. As the patient became more alert following his head injury he became more agitated and moved about a great deal in the bed. This caused an ulceration to develop over the right tibial fracture. The cast was windowed in this area and the ulceration cared for. The ulceration gradually healed completely by secondary intent. On 3/17/72 the patient was taken to surgery and both casts were removed.

## Medical reports &amp; hospital records.

Page 3  
Michael Judge

The patient was seen on 7/26/72 and the short leg cast was removed from the right lower extremity. X-ray study revealed further healing, although an insufficient amount to allow him out of plaster. Therefore, a new short leg walking cast was applied.

In summary, I believe Michael Judge was injured on 2/27/72 as a result of being struck by an auto. His main orthopedic injuries were a comminuted displaced fracture of the mid shafts of the right tibia and fibula and a displaced fracture of the distal left tibia and fibula. I believe the patient was totally disabled from 2/27/72 until the present. The patient may have a mild to moderate permanent disability, although it is impossible to say at this early date if there will be any and how much there will be in the way of permanent disability. The patient also suffered a cerebral concussion for which the patient was under the care of Dr. Ikram Haque.

Sincerely yours,

*Walter D. Hoffman, M.D.*

Walter D. Hoffman, M.D.

Enc. 1

cc: Our file

WDH:maj



## Affidavit of William J. Cleary.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

MICHAEL JUDGE  
20 Shenandoah Road  
Buffalo, New York,

Plaintiff,

vs.

CITY OF BUFFALO  
City Hall  
Buffalo, New York,

Defendant.

A F F I D A V I T

CIVIL NO. 1973-307

STATE OF NEW YORK )  
COUNTY OF ERIE : ss:-  
CITY OF BUFFALO )

WILLIAM J. CLEARY, being duly sworn, deposes and says:

1. I am the Administrative Director of the Buffalo Civil Service Commission, and, as such, I am familiar with the facts and circumstances involved in this action. I make this affidavit in order to supplement affidavits previously submitted to the Court in support of the defendants' Motion for Summary Judgment.

2. In connection with the Community Peace Officer Program, the Commission adopted the following Rule on February 17, 1971 (Rule 18, Par. 10):

"10. Notwithstanding the foregoing provisions of this rule, a Community Peace Officer will be appointed for a probationary period until he completes at least one year of service as a Community Peace Officer and thereafter until a permanent vacancy occurs in the position of Patrolman, at which time he shall automatically become a probationary Patrolman in said position without further written examination provided he passes a satisfactory medical examination. In

**Affidavit of William J. Cleary.**

*computing the one year of service as a Community Peace Officer, temporary and/or provisional service will be included provided the candidate has passed the examination for Community Peace Officer and is appointed to said position in accordance with Civil Service Law." (Emphasis Supplied)*

3. In accordance with the above Rule, the plaintiff was examined for the position of Patrolman by the Commission's physician on January 24, 1974. At this examination, the plaintiff failed to disclose that he had been involved in an automobile accident on February 27, 1972, and that he had sustained certain injuries to his legs (see answer to question No. 2 on Exhibit #1 attached to Dr. Birchette's affidavit.)

4. At this examination the plaintiff's height was noted to be 5'7". A notice was thereupon sent to him advising him of the Commission's then current height regulation of 5'9" (see exhibit No. 1 hereto attached.)

5. Since the plaintiff could not have been initially accepted in 1971 unless he was at least 5'9" tall, and his height now appeared to be 5'7", an investigation was undertaken to determine the reasons for this discrepancy.

6. I contacted the Police Administrator of the Buffalo Police Department to determine whether or not he had any information on the plaintiff's physical condition. He informed me that the plaintiff had been in a serious automobile accident on February 27, 1972 and had sustained certain injuries which kept him away from his job in the Police Department until August 24, 1972, at which time he had been permitted to return to work on a light duty basis by the examining physician for the Police Department.

7. While the Commission's review of Mr. Judge's status was still in progress, he requested an opportunity to



## Affidavit of William J. Cleary.

to appear before it in order to discuss the matter. The Commission agreed to hear him and he appeared on May 23, 1974. At that time, the Commission asked Mr. Judge for permission to examine the hospital records and the reports of his attending physician relating to his accident and injuries, and he consented.

8. After these records and reports were received on or about June 1, 1973, the Commission submitted them to its examining physician, Dr. George A. Birchette, for his review and evaluation.

9. After examining these reports, Dr. Birchette recommended that the plaintiff be rejected for the position of Patrolman because of his injuries (see exhibit No. 2 hereto annexed, at place marked.)

10. At the Commission's regular meeting held on June 6, 1973, it reviewed the various records and reports relating to the plaintiff's physical condition and determined that he was ineligible for certification due to his physical condition. (Exhibit No. 3, Commission Minutes of June 6, 1974).

11. Thereafter, on June 7, 1973, the Commission notified the plaintiff that he had failed to pass the required medical examination for the position of Patrolman (see Exhibit No. 4.)

12. At the Commission's regular meeting held on June 27, 1973, Anthony J. Colucci, the President of the Commission, responded to inquiries regarding the Commission's determination on Mr. Judge's condition by stating that his height was never a factor in the case, and that the Commission's concern related to his physical abilities to do the job of Patrolman (see Exhibit No. 5, Commission Minutes of June 27, 1973; Exhibit No. 6,

## Affidavit of William J. Cleary.

Newspaper account of meeting, at place marked).

13. The plaintiff commenced this action on June 27, 1973. However, prior to the service of the summons and complaint upon the Commission, it had already undertaken arrangements to have the plaintiff examined by another physician selected by the Commission so that it might have the benefit of his opinion on the question of Mr. Judge's physical condition. Such an examination was held but after considering the medical report of this examination, the Commission decided to adhere to its original determination.

14. On October 31, 1974, the Commission agreed to reconsider the question of the plaintiff's physical condition, and requested him to re-take the agility test which he had taken and successfully passed in 1971 in connection with his application to become a Community Peace Officer (see Exhibit No. 7, Commission Minutes of October 31, 1974). It also agreed to certify him as eligible for appointment if he passed it.

15. The agility test was scheduled for November 20, 1973. I was informed by Assistant Corporation Counsel James J. McLoughlin that on that date he advised the plaintiff's attorney that if the plaintiff did not feel himself ready to take the test on that date, he would be permitted to postpone it until such time as he felt ready. However, the plaintiff took the test as scheduled. He failed to pass it (see Exhibits No. 8A, 8B, 8C, 8D - the test results, and Exhibit No. 9, the test scoring standard). This contrasts with the results he achieved when he first took this examination test on October 10, 1971 which was, of course, prior to his accident. (See Exhibit No. 10). The differences in the plaintiff's test scores are particularly noticeable in the activities which involve the use of his legs.



## Affidavit of William J. Cleary.

16. Thereafter, on December 5, 1973, the Commission again determined that the plaintiff did not meet the physical qualifications for appointment to the position of Patrolman (see Exhibit No. 11, Commission Minutes of December 5, 1973; Exhibit No. 12, Letter from Commission to Corporation Counsel, dated December 7, 1973).

17. On December 12, 1973, the plaintiff was informed by the Corporation Counsel's Office that the Commission had determined that the plaintiff was physically unable to perform the duties of a Patrolman and for that reason, it would not certify him as eligible for appointment to that position. (Exhibit No. 13).

18. As far as the issue of height is concerned, on the 18th day of December, 1973, and for reasons wholly unrelated to this action, the Commission reduced the minimum height requirement for candidates for the position of Police Cadet (which is a trainee position for the office of Patrolman) from 5'9" to 5'7". Thereafter, on May 8, 1974, following the recommendations of the Municipal Police Training Council the Commission lowered the height requirement for Patrolman even further.

19. The Commission's decision not to certify the plaintiff was made upon the basis of his physical condition, and not his height.

*William J. Cleary*

Subscribed and sworn to before me  
this 24<sup>th</sup> day of July, 1974.

*James H. Franklin*  
Commissioner of Deeds in and for  
The City of Buffalo, New York  
My Commission expires 12/31/74.

Feb. 6, 1973 letter to Michael Judge.

February 6, 1973

Mr. Michael D. Judge  
20 Shenandoah Road  
Buffalo, New York 14220

Dear Mr. Judge:

At a meeting held on January 31, 1973 the Commission considered your eligibility for appointment to the position of Probationary Patrolman.

The Commission noted that in your final medical for this position, you do not meet the height requirement. The Commission directed that your name be deferred for certification for the position of Patrolman until you are reached for appointment to this position, at which time, if you do not meet the height requirement, your name will not be certified as eligible for appointment to Patrolman and your appointment as a Community Peace Officer must be terminated.

Very truly yours,

William J. Cleary  
Administrative Director

WJC:11

EXHIBIT #1





## Physical examination report.

## MEDICAL HISTORY

NOTE: APPLICANTS WILL FILL IN THE FOLLOWING:

1. WHAT ILLNESSES HAVE YOU HAD IN THE LAST FIVE YEARS? NONE
2. WHAT INJURIES OR SURGICAL OPERATIONS HAVE YOU HAD? GIVE DETAILS. NONE
3. HAVE YOU EVER DRAWN WORKMEN'S COMPENSATION? NO  
 WHERE EMPLOYED WHEN INJURY WAS SUSTAINED? \_\_\_\_\_  
 NATURE OF INJURY \_\_\_\_\_  
 DATE OF INJURY \_\_\_\_\_  
 DECISION AND AWARD OF COMPENSATION \$ \_\_\_\_\_  
 IS CASE CLOSED? \_\_\_\_\_
4. NAME EITHER OF YOUR PARENTS, BROTHERS, OR SISTERS HAD? NO  
 DIABETES NO NERVOUS BREAKDOWN NO  
 EPILEPSY NO TUBERCULOSIS NO  
 MENTAL DISEASE NO
5. INDICATE BY A CHECK MARK (✓) THE FOLLOWING CONDITIONS YOU HAVE HAD:
- |                                                  |                                              |                                            |
|--------------------------------------------------|----------------------------------------------|--------------------------------------------|
| <input type="checkbox"/> ARTHRITIS               | <input type="checkbox"/> MALARIA             | <input type="checkbox"/> RHEUMATISM        |
| <input type="checkbox"/> ASTHMA                  | <input type="checkbox"/> HEMORRHOIDS         | <input type="checkbox"/> RUPTURE           |
| <input type="checkbox"/> CANCER                  | <input type="checkbox"/> HIGH BLOOD PRESSURE | <input type="checkbox"/> SCARLET FEVER     |
| <input type="checkbox"/> DIABETES                | <input type="checkbox"/> KIDNEY DISEASE      | <input type="checkbox"/> SPITTING OF BLOOD |
| <input type="checkbox"/> DISCHARGE FROM EAR      | <input type="checkbox"/> MENTAL DISEASE      | <input type="checkbox"/> SYPHILIS          |
| <input type="checkbox"/> EPILEPSY OR CONVULSIONS | <input type="checkbox"/> NERVOUS BREAKDOWN   | <input type="checkbox"/> TUBERCULOSIS      |
| <input type="checkbox"/> GONORRHEA               | <input type="checkbox"/> PLEURISY            | <input type="checkbox"/> ULCER OF STOMACH  |
6. HAVE YOU EVER TAKEN AN EXAMINATION GIVEN BY THE MUNICIPAL CIVIL SERVICE COMMISSION OF BUFFALO? YES IF YES, LIST DATES AND TITLES OF EXAMINATION:
- | DATE          | TITLE                           |
|---------------|---------------------------------|
| <u>1-2-71</u> | <u>COMMUNITY POLICE OFFICER</u> |
|               |                                 |
|               |                                 |
7. HAVE YOU EVER BEEN REJECTED FOR LIFE INSURANCE? NO
8. OUTLINE THE TYPE OF WORK PERFORMED BY YOU IN THE LAST FIVE YEARS:  
DEC. 17, 1971 COMMUNITY POLICE OFFICER  
TILL PRESENT
- 1-24-73 DATED R.D.D. D. SIGNATURE OF APPLICANT



Minutes of Board of Education June 6, 1973.

-- MINUTES NO. 22 --

Regular meeting of the Municipal Civil Service Commission  
was held on Wednesday, June 6, 1973 at 10:15 A.M.

PRESENT: Anthony J. Colucci, President; Frank A. Stachowiak,  
Herbert L. Bellamy, Commissioners; Raymond J. McMahon, Secretary;  
and William J. Cleary, Administrative Director.

\* \* \* \* \*

The Commission took from the table the matter of the  
appearance of Michael D. Judge, a Community Peace Officer.

In this connection the Commission reviewed a report from  
Sebastian P. Graffeo, Esq. which contains the hospital records  
and reports of Dr. Walter Hoffman, orthopedic surgeon.

After a review of this matter, the Commission also reviewed  
Rule 18, Paragraph 10 of its rules relative to the provision that  
a Community Peace Officer must have a satisfactory medical ex-  
amination prior to being appointed Patrolman. The Commission  
noted that Mr. Judge could not pass this examination.

The Commission directed the Administrative Director to  
inform Mr. Judge that they have no alternative but to disapprove  
his appointment to the position of Patrolman.

Board letter to Michael Judge 6/7/73.

June 7, 1973 ✓

Mr. Michael D. Judge  
20 Shenandoah Road  
Buffalo, New York 14220

Dear Mr. Judge:

At a meeting held on June 6, 1973 the Commission considered your eligibility for appointment to the position of Patrolman.

In this connection the Commission reviewed Rule 18, paragraph 10 of its Rules which states that a Community Peace Officer must pass a satisfactory medical examination before appointment to the position of Patrolman.

In reviewing your medical history, the Commission is constrained to inform you that you have not passed a satisfactory medical examination for this position. The Commission has no alternative but to disapprove your appointment to the Patrolman position.

Very truly yours,

William J. Cleary  
Administrative Director

WJC:11

EXHIBIT #4



## Minutes of Board of Education, 6/27/73.

- MINUTES NO. 25 -

Regular meeting of the Municipal Civil Service Commission was held on Wednesday, June 27, 1973 at 10:10 a.m.

PRESENT: Anthony J. Colucci, President; Frank A. Stachowiak, Herbert L. Bellamy, Commissioners; Raymond J. McMahon, Secretary; and William J. Cleary, Administrative Director.

\* \* \* \* \*

The Commission called a press conference relative to the certification of Michael D. Judge as a Patrolman. Attending this conference were Russ Nichols, Channel 2 Action Reporter; William Heffernan, Courier Express; and Al Popial, Buffalo Evening News. The Commission discussed the matter of the eligibility of Mr. Judge for the position of Probationary Patrolman. The Commission recounted in detail the history of this case. The Commission reviewed its minutes of May 23, June 6 and June 20, 1973 and his medical of January 24, 1973 which indicated that in answering his medical history he has not had any surgical operations or injuries. The Commission further reviewed the medical report from Walter D. Hoffman, M.D., dated August 29, 1973 indicating that he may have a mild to moderate permanent disability and a more recent communication from Dr. Hoffman did not refer to this disability, yet alluded to the height requirements.

After a thorough review and discussion of this matter, the Commission directed that Mr. Judge submit to a disinterested orthopedic surgeon to evaluate his disability and his physical condition as it relates to the performance of the duties of a Patrolman. The Commission further directed that they would consider this matter when the report from the orthopedic surgeon is received.

\* \* \* \* \*

8 BUFFALO COURIER-EXPRESS, Thursday, June 23, 1973

## Police Candidate Made False Report

A community peace officer who is fighting to join the Buffalo Police Dept. despite an accident which resulted in a two-inch loss in height and his disqualification, may still lose his battle because he "falsified a recent medical report before the city Civil Service Commission, The Courier-Express learned Wednesday.

Michael Judge, 24, of 20 Shenandoah Rd., was scheduled to become a probationary patrolman July 1, but has now been offered a post as an auto pound attendant, due to the discovery of physical injuries suffered in a 1972 auto accident.

**Both Legs Broken**  
As a result of that accident, Judge suffered two broken legs and a head injury. The leg injuries resulted in a decrease in his height, from 5 feet 9 5/8 inches, to 5 feet 7 inches.

On Jan. 24, 1973, however, Judge applied to the Civil Service Commission asking to be made a probationary patrolman, as allowed under civil service regulations, providing he, as a community peace officer, passed another physical examination.

During that physical, Judge filled out and signed a physical history sheet, on which he stated he had suffered no illness, injury or fractures since his Oct. 2, 1971 physical examination for community peace officer.

When the second physical examination was completed, commission members noticed the two-inch discrepancy in height and ordered an investigation, thinking the height data on the first physical might have been fraudulent.

**False Statement**  
Commission President Anthony J. Colucci said the accident and injuries were discovered during that enquiry, forcing the commission to face the fact "that Judge filed a false and incorrect statement."

Colucci explained that under Rule 12 of the Civil Service regulations, the commission may disqualify any applicant for a post "who has intentionally made a false statement."

Colucci added that he would have sent the entire matter of Judge's statement to the district attorney's office if it had been taken under oath. "It was not."

**Made Mistake**  
When questioned by The

Courier-Express about the statement, Judge first insisted he knew nothing about it. He then conceded that he had filled out a physical history form, but had believed the questions only referred to his current state of health.

"My doctor tells me I'm perfectly alright," he said, "so I answered the questions like I was perfectly alright."

A report filed by Dr. George A. Burchette, physician to the commission said an examination of Judge and his medical history have shown he is permanently disabled and unable to meet the requirements for patrolman.

The commission also disclosed a letter from Judge's physician, Dr. Walter D. Hoffman, which did not touch on the question of disability.

**Another Examination**  
In an earlier report by Dr. Hoffman — a report dated Aug. 29, 1972 for use in a lawsuit in which he successfully sought damages for Judge's injuries — the community peace officer was described as having "a mild to moderate permanent disability." The report added that it was impossible to tell how long or to what extent that disability would last.

In explaining the commission's position, Colucci said he was "mindful of the public opinion generated by the case" and that the commission had taken every precaution because of this.

He said the commission now planned to have Judge submit to an independent physical examination to determine what disability, if any, exists.

**To Make Review**  
After that examination, which will be paid for by the commission, Judge's case will be reviewed again and consideration of approval given, "if he passes the physical examination," Colucci said.

Asked what effect the false statement would play in the decision, Colucci said it would be "a factor of consideration, because we consider it a serious matter."

"His (Judge's) height was never a factor in the case," Colucci said. "We were concerned about his physical abilities to do the job and we still are. We are now also concerned about this false statement, so both factors will have to be considered."



## Minutes of Board of Education 10/31/1973.

- MINUTES NO. 37 -

Regular meeting of the Municipal Civil Service Commission was held on Wednesday, October 31, 1973 at 9:15 a.m.

PRESENT: Anthony J. Colucci, President; Frank A. Stachowiak, Herbert L. Bellamy, Commissioners; Raymond J. McMahon, Jr., Secretary; William J. Cleary, Administrative Director; and Albert J. Petrella, Assistant Director of Personnel Systems.

\* \* \* \* \*

James J. McLoughlin, Assistant Corporation Counsel, appeared at the Commission's request to report on the pretrial conference held in connection with the federal litigation filed by Michael D. Judge concerning his appointment to the position of Patrolman. Mr. McLoughlin related to the Commission the results of this conference.

At the conclusion of Mr. McLoughlin's report, the Commission advised Mr. McLoughlin that it is their desire to have Mr. Judge take another agility test. Mr. McLoughlin told the Commission that he would advise them of the outcome of this matter.

\* \* \* \* \*

Marion Judge  
Lecturer U.S. & C Page 1

BUFFALO MUNICIPAL CIVIL SERVICE COMMISSION *Cont. Case*

AGILITY TEST 11/20/73

I - BAR CHINNING

[illegible]



**Agility test results 11/20/73.**

Page 2

BUFFALO MUNICIPAL CIVIL SERVICE COMMISSION

### AGILITY TEST

II - HIGH JUMP[illegible]

**Agility test results 11/20/73.**

Page 3

BUFFALO MUNICIPAL CIVIL SERVICE COMMISSION

### AGILITY TEST

### III - STANDING BROAD JUMP

[illegible]



Agility test results 11/20/73.

Page 4

BUFFALO MUNICIPAL CIVIL SERVICE COMMISSION

### AGILITY TEST

IV - 300-YARD RUN[illegible]

## Agility test standards.

PHYSICAL AGILITY TESTSTRENGTHI - Bar Chinning

Candidates will be required to chin themselves on a horizontal bar 5 times to attain a score of 75% in this event.

|                 |                 |               |
|-----------------|-----------------|---------------|
| <u>1 chance</u> | 10 Times - 100% | 4 Times - 70% |
|                 | 9 " - 95%       | 3 " - 65%     |
|                 | 8 " - 90%       | 2 " - 60%     |
|                 | 7 " - 85%       | 1 " - 55%     |
|                 | 6 " - 80%       | 0 " - 0%      |
|                 | 5 " - 75%       |               |

AGILITYII - High Jump

Candidates will be permitted a short run and will be obliged to clear 3 feet 3 inches to attain a score of 75% in this event.

|                  |              |             |
|------------------|--------------|-------------|
| <u>3 chances</u> | 4' 6" - 100% | 3' 6" - 80% |
|                  | 4' 3" - 95%  | 3' 3" - 75% |
|                  | 4' 0" - 90%  | 3' 0" - 70% |
|                  | 3' 9" - 85%  |             |

III - Standing Broad Jump

From a standing position candidates will be required to jump forward 6 feet 3 inches to attain a score of 75% in this event. Distance will be measured from the starting position to the most rear portion of the body of the candidate.

3 chances 1 Inch - 1 Point

ENDURANCEIV - 300-Yard Run

Candidates will be required to run 300 yards on an indoor track.

|                 |                   |                  |
|-----------------|-------------------|------------------|
| <u>1 chance</u> | 44 Seconds - 100% | 54 Seconds - 85% |
|                 | 46 " - 97%        | 56 " - 82%       |
|                 | 48 " - 94%        | 58 " - 79%       |
|                 | 50 " - 91%        | 60 " - 76%       |
|                 | 52 " - 88%        | 62 " - 73%       |

1.5 points will be deducted for each 1 second over 44

EXHIBIT # 9



Agility test results 7/10/71.

Community Peace Officer

Community Peace Officer  
Agility Test taken by Michael Judge #164 - 7/10/71

## SUMMARY

[illegible]

## Minutes of Civil Service Commission.

- MINUTES NO. 41 -

Regular meeting of the Municipal Civil Service Commission was held on Wednesday, December 5, 1973 at 9:45 A.M.

PRESENT: Anthony J. Colucci, President; Herbert L. Bellamy, Commissioner; Raymond J. McMahon, Jr., Secretary; William J. Cleary, Administrative Director; and Albert J. Petrella, Assistant Director of Personnel Systems.

\* \* \* \* \*

The Commission considered a report from its Examination Section concerning the administration of the agility test for Michael D. Judge. The Commission noted that Mr. Judge failed to pass this agility test and as a result thereof, concluded that he is physically incapable of performing successfully the duties of Patrolman and therefore should not be certified as eligible for appointment to that position.

\* \* \* \* \*



Letter 12/7/73 re results, agility test.

*McLoughlin*

ANTHONY J. COLUCCI, President  
 HERBERT L. BELLAMY  
 FRANK A. STACHOWIAK  
 Commissioners  
 RAYMOND J. McMAHON, JR.,  
 Secretary

**Municipal Civil Service Commission**  
 1001 City Hall, Niagara Square  
 Buffalo, New York 14202

WILLIAM J. CLEARY  
 Administrative Director

December 7, 1973

Mr. James J. McLoughlin  
 Assistant Corporation Counsel  
 City Hall  
 Buffalo, New York

RECEIVED  
 Department of Law  
 Buffalo, N.Y.  
 DEC 7 1973

Dear Mr. McLoughlin:

At a meeting held on December 5, 1973 the Commission considered a report from its examination section concerning the administration of the physical agility test to Michael D. Judge.

Mr. Judge appeared at Lafayette High School on Tuesday, November 19, 1973 at 3:45 p.m. The test administered to the candidate was the same test administered to all other candidates for the positions of Patrolman, Community Peace Officer and Police Cadet. Mr. Judge received a mark of 63.88 in said examination.

In accordance with the provisions of Rule 9, paragraph 4 of the Commission's Rules, a score of 70 shall represent a performance meeting the minimum needs of the position.

Mr. Judge would not have been considered a successful candidate in this examination, and it is the Commission's judgment that in view of his failure to pass the agility test, he is physically incapable of performing the duties of a Patrolman. Therefore, he will not be certified as eligible for appointment to that position.

Very truly yours,

A handwritten signature of William J. Cleary in cursive script.

William J. Cleary  
 Administrative Director

WJC:11

Letter 12/12/73 re results, agility test.

*McLaughlin*

December 12, 1973

Francis X. Murphy, Esq.  
914 Abbott Road  
Buffalo, New York 14220 -

Re: Michael Judge  
v.  
City of Buffalo  
(CIV-1973-307)

Dear Mr. Murphy:

The Civil Service Commission has informed me that your client, Michael Judge, took the Physical Agility Test on November 19, 1973, but failed to pass it. Consequently, it is the Commission's determination that Mr. Judge is physically unable to perform the duties of a Patrolman and for this reason it will not certify him as eligible for appointment to such position.

Very truly yours,

ANTHONY MANGUSO  
Corporation Counsel

JJMCL/hg  
cc: Edmund F. Maxwell,  
U. S. Magistrate  
414 U. S. Court House Bldg.  
Court Street  
Buffalo, New York 14202

Municipal Civil Service Commission  
1001 City Hall



## Answering Affidavit of John Donsbach.

STATE OF NEW YORK )  
COUNTY OF ERIE ) ss

John Donsbach, having been duly sworn, upon his oath states:

I am the gang boss of scoopers for Great Lakes Association, Inc. I am 67 years old and I have spent my entire working life as a scooper. Michael Judge has worked as a scooper under my direct supervision for approximately the last four years.

I have read the description of a scooper's job in Michael Judge's affidavit of September 14, 1974. It is an entirely accurate description.

The only thing that I would add to it is that strong legs are a very essential part of a scooper's physical equipment. For about 90% of the time the scooper is walking in grain up to his knees. Mr Judge, because of his 1972 accident did not work during that year. He returned to work in June of 1973. He has worked in this seasonal job continuously since then under my direct observation and supervision.

From the day he returned to work Mr Judge did more than a good day's work scooping. I regard him as one of my better employees. He goes right down into the hold of the boat and does his work. On more than one occasion I have called up his boss at the police garage and asked permission for Michael Judge to be allowed time off from his police garage job to come in and help me.

Knowing what I know about how essential strong legs are to a scooper one thing I am sure of and that is that Michael Judge's legs are strong.

John Donsbach

Subscribed and sworn to before  
me this 14th day of September 1974

Thomas X Murphy

New York  
County  
No. 1975

## Answering Affidavit of Michael Judge.

UNITED STATES DISTRICT COURT : WESTERN DISTRICT OF NEW YORK

MICHAEL JUDGE

plaintiff

v

CITY OF BUFFALO

Civil Action No 1973-307

defendant

ANSWERING AFFIDAVIT OF MICHAEL JUDGESTATE OF NEW YORK )  
COUNTY OF ERIE ) SS:

MICHAEL JUDGE being duly sworn, deposes and says;

I am the plaintiff. I answer the affidavits of William J. Cleary of July 24, 1973, that of Dr. George Birchett, M.D. of July 19, 1974 as follows:

I took the second physical examination required of all community peace officers together with the rest of them on January 24, 1973. This is exactly what happened on that date.

I took the physical in City Hall in the office of the Civil Service Commission. I was there examined for weight, height and eye test by non medical personnel of the Civil Service Commission. I was then ushered into a little room to see the doctor. He tested my blood pressure, checked me for rupture, gave me a blood test, took me outside and told me to pis in a bottle. In addition to the above the doctor saw my leg and asked me what had happened. I told him that I had been in an auto accident and had broken both of my legs. Then the doctor asked me:

"How are they" I answered "Good", He then brushed his hand upon it and said: "It looks good" That was absolutely



## Answering Affidavit of Michael Judge.

the only comment the doctor made about it. I asked the Doctor how the blood pressure checked out and he said "Good"

and

I then went outside/the guy who checked my height told me:

"stretch a lot and we'll check it again in a couple days". The Commission made an appointment for me to come back about a week later and I did. All they did then was check my height. I went back again about a week later and again all they did was check my height.

The medical examination report attached to the affidavit of Mr. Cleary and Dr. Birchette is very misleading. The exhibit is made to appear as if the REJECT language appearing on the bottom of the exhibit was part of the original record made at my physical examination of January 24, 1973.

It is not. This is shown by the affidavit of Dr. Birchette. He learned of these conditions after reading my medical reports and doctor reports some time after June 1, 1973.

I challenge the City of Buffalo to produce the exact record of my physical examination as made by Dr. Birchette describing what he saw of me on that January 24, 1973 and what his opinion was of me on January 24, 1973.

I was rejected on account of my height and only on account of my height. It was not until after the coming out of the Federal Guidelines rejecting height as a qualification for employment that other reasons than height were sought.

The records of the Civil Service Commission made shortly after my physical examination of January 24, 1973 gave the reason for my rejection. The minutes of the Civil

## Answering Affidavit of Michael Judge.

Service Commission for January 31, 1973 page 479, page 5 of the minutes of that date read as follows:

"After a review of the medical report, the commission noted that Mr. Judge does not meet the height requirement for this position. The Commission directed the Administrative Director to notify Mr. Judge that his name will be deferred for certification until he has been reached for patrolman at which time if he does not meet the height requirement his name will be not be certified as eligible for appointment to patrolman and his employment as a G.P.O. will be terminated".

To put this language in context the City should produce that report the commission refers to. The letter of February 6, 1973 from William J. Clear, Administrative Director informing me to the exact effect that height and height alone was the reject ground is already in the record. A copy is annexed hereto.

If there had been no height requirement at the time of my physical examination I would have passed it with flying colors because height was the only thing in issue and I was examined on three separate occasions for height and never for anything else but height except at my physical examination.

Dr. Birchette never gave me a later physical examination than the one he gave me on January 24, 1973. He never said on January 24, 1973 that my legs were the cause of my rejection. He did not reexamine me after he got my hospital and doctor records. He made the rejection based upon his evaluation of my hospital and medical records and not upon my physical condition of my legs on the date of his report. Incidentally the report of medical examination attached to Mr. Cleary's and Dr. Birchett's affidavit is undated.



## Answering Affidavit of Michael Judge.

I challenge the City of Buffalo to produce the record of my examination of January 24, 1973 exactly as it was on January 31, 1973 when the Civil Service Commission made its decision to reject me on account of my height.

I now wish to respond to the allegation that I made a low score on the agility test annexed to the affidavit of Mr. Cleary. In the literature describing the requirement for the position of Community Peace Officer, a total score of 70% was required to pass. The written test was weighted at 60% of the total and the agility test was weighted at 40% of the total. On September 4, 1974 I confirmed by telephone call to the Civil Service Commission that this was so and that this is still so.

Annexed hereto is the official advertisement for candidates. At the bottom of the face sheet is the following language:

"Subject of examination: written Examination  
Physical Agility Test

Candidates must participate in the written and Physical agility test and receive an average score of 70% to be on the eligible list"

That the Physical Agility test is weighted at 40% is shown by Exhibit 10 annexed to the affidavit of Mr. Cleary, and which I also annex hereto which shows the results of the agility test I first took when I was accepted into the Community Peace Officer program. The very last column shows that the Agility test carries only a 40% weight.

According to the City's own standards it is not a case of passing all three tests, a physical examination, and an agility

## Answering Affidavit of Michael Judge.

test weighted at 40\$ must average 70% and I must pass a physical examination. I did pass the physical examination by a doctor of the City's own choice, Stephen T. Joyce, M.D. His conclusion after two thorough phsyical examinations, fully described in the attached report of his is:

"After again looking over your criteria--  
that I do not feel that the injuries  
this man sustained would interfere with the  
proper performance of his duties."

For five months during 1973 and again now in 1974, in addition to my duties at the City Garage I have supplemental employment to enable me to try to support my growing family I am employed on the boats as a grain scooper.

I am a grain scooper on the boats, working about four hours per day approximately from April to the end of navigation which may be anywhere from Mid December to the end of January, working about 4 hours per day. I have worked on this job for 6 years. That is what the job consists of:

The hold of the boat where the grain is, is one great big room. The way the grain is gotten out of the boat into the elevators is by scoopers like myself shoveling partly by hand with hand shovels the grain into the leg, which is the conveyor into the elevator itself, and partly by means of mechanical shovels approximately two feet x two feet attached to a line.

The scooper must go to the back of the boat, pulling the rig up lines continuously walking in grain up to your knees. When I get to the back of the boat I push the 3' x 3' shovel down into the grain. I then loosen my pull on the line and that loosening automatically makes the shovel go forward pulling the grain with it. After that run the brakeman pulls the shovel



## Answering Affidavit of Michael Judge.

back to me and I repeat the process. After the grain is down a bit I follow the shovel right out to the leg.

The mechanical shovel only takes out so much grain. After a time I must use a conventional hand shovel to get at the grain that the mechanical shovel will not remove. I then hand shovel what is left.

This is strictly bull work and it is bull work that puts a very great amount of strain upon the legs. Yet I have been able to do it.

I returned to work on the police department in August of 1970. I went back scooping in June of 1973 and I have worked there ever since, seasonally, through December of January as the case may be.

There is no issue of fact as to the ability to perform the duties of a police officer. The detailed opinion of Dr. Stephen T. Joyce establishes as a fact that the injuries I sustained have fully healed to such an extent that they do not interfere with the performance of a policeman's duties. The reason I was denied a job was because of my height and that is a reason that is illegal under the Federal guidelines.

There is no defense to my action and I respectfully request that the court render summary judgment in my favor.

Michael D. Judge

Subscribed and sworn to before me

this 14 day of September, 1974

James M. Murphy  
Notary Public, Erie Co., New York

2/6/73 letter to Michael Judge.



ANTHONY J. COLUCCI, President  
HERBERT L. BELLAMY  
FRANK A. STACHOWIAK  
Commissioners  
RAYMOND J. McMAHON, JR.,  
Secretary  
HOWARD J. GLEASON  
Examination Director (Emeritus)

**Municipal Civil Service Commission**

1001 City Hall, Niagara Square  
Buffalo, New York 14202

WILLIAM J. CLEARY  
Administrative Director

February 6, 1973

Mr. Michael D. Judge  
20 Shenandoah Road  
Buffalo, New York 14220

Dear Mr. Judge:

At a meeting held on January 31, 1973 the Commission considered your eligibility for appointment to the position of Probationary Patrolman.

The Commission noted that in your final medical for this position, you do not meet the height requirement. The Commission directed that your name be deferred for certification for the position of Patrolman until you are reached for appointment to this position, at which time, if you do not meet the height requirement, your name will not be certified as eligible for appointment to Patrolman and your appointment as a Community Peace Officer must be terminated.

Very truly yours,

*William J. Cleary*  
William J. Cleary  
Administrative Director

WJC:11



Dr. Joyce medical report Civil Service Commission, 9/9/73.

TELEPHONE 885-7900

JOHN J. GIARDINO, M. D. AND  
STEPHEN T. JOYCE, M. D., P. C.

50 GATES CIRCLE  
BUFFALO, NEW YORK 14209

September 9, 1973

Anthony J. Colucci, Pres.  
Civil Service Commission  
1001 City Hall  
Buffalo, New York 14202

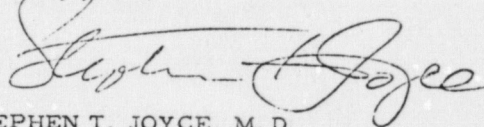
RE: JUDGE, Michael

Dea Colucci:

Please excuse the delay in this report of x-rays taken. After review of his file - they generally show the fracture through the body of the 4th. cervical vertebrae in good position as well as a markedly comminuted fracture of his right tibia and a fracture through the supra-malleolar area - not extending into the joint of his left ankle. These fractures have healed. The over-all alignment is satisfactory and while there is some atrophy secondary to the comminution, I feel the healing has been quite satisfactory.

Because none of these fractures extended into the joints, I would think the subsequent involvement of Degenerative Arthritis is minimal - if at all. It is because of this --and after again looking over your criteria, - that I do not feel that the injuries this man sustained would interfere with the proper performance of his duties.

Sincerely yours,



STEPHEN T. JOYCE, M. D.

STJ/gmr

P.S. Your chart is returning to you under separate cover.

EXHIBIT  
BIBLIOGRAPHY FILE 5  
DATE 2/1/74  
Barbara L. Baling

Civil Services letter of instruction to Dr. Joyce, 7/19/73.

MUNICIPAL CIVIL SERVICE COMMISSION

1001 City Hall, Niagara Square  
Buffalo, New York 14202

July 19, 1973

Stephen T. Joyce, M. D.  
50 Gates Circle  
Buffalo, New York 14209

RE: Michael Judge

Dear Dr. Joyce:

Thank you for your preliminary report of July 6, 1973 concerning the above. The Commission is extremely interested in receiving your final report after you have examined the x-ray films.

To assist you in your determination of Mr. Judge's eligibility to hold the position of Patrolman, I am enclosing herewith specification for this office.

The medical examiners for the City of Buffalo are instructed that the position of Patrolman is one that demands great physical endurance which must be appraised on the basis of a life time of service. The medical examiner should understand that his examination is envisioning a candidate's physical condition for 20 years of police service. If a defect is such that it could become disabling, the candidate would not be suitable for a life time of service in the Police Department. Our medical examiners are advised that it is important to keep in mind in connection with the medical examination that the appraisal is being made, not only as it exists at the time of the examination but is being projected over a career of 20 years or more filled with the difficult and exacting physical demands of police protection.

I am also enclosing our physical standards for the position of Patrolman. It is further noted in reviewing the final diagnosis on discharge from Mercy Hospital that the candidate received a fracture thoracic vertebrae and we would appreciate your comment as it relates to the requirement concerning the spinal column proper.



Civil Services letter of instruction to Dr. Joyce, 7/19/73.

Stephen T. Joyce, M.D.

-2-

July 19, 1973

Finally, we would appreciate a medical prognosis predicated on your examination and prior history as to whether or not you feel this candidate is capable of discharging the duties of a Patrolman now and over the next 20 years. Please keep in mind in this report the duties expected of a Patrolman in these specifications. Would the loss of dorsiflexion in the right ankle, as stated in your report of July 6th, be disabling in the performance of a Patrolmans duties?

Thank you for your consideration in this matter.

Very truly yours,

Anthony J. Colucci  
President

jp

Dr. Joyce medical report, Civil Service Commission  
7/6/73.

JOHN J. GIARDINO, M. D. AND  
STEPHEN T. JOYCE, M. D., P. C.

80 GATES CIRCLE  
BUFFALO, NEW YORK 14209  
July 6, 1973

Anthony J. Colucci, Pres.  
Civil Service Commission  
1001 City Hall  
Buffalo, New York 14202

RE: JUDGE, Michael

Dear Mr. Colucci:

Mr. Judge was examined on July 3rd. of this year for evaluation of his back and lower extremities.

HISTORY: The patient states that he was involved in an automobile accident on February 27th., 1972 when he was struck by an automobile while crossing the street. He was apparently rendered unconscious and taken to Buffalo Mercy Hospital where he was admitted to the Intensive Care Unit. During the course of that accident, he apparently sustained a compression fracture of his dorsal spine and fractures of both lower extremities involving the tibia.

He states that both his legs were immobilized in plaster - long leg casts - the left for approximately two months and the right for approximately six months.

At the present time, the patient denies any complaints referable to his lower extremities or to his back - although, he did state that prior to the insertion of a heel lift to his right heel by his prior physician he did notice some discomfort. Since the insertion of that lift he denies any complaints and has been actively working - some times in the Grain Mills without any discomfort.

PHYSICAL EXAMINATION revealed an obese, co-operative male in no acute distress. The patient walked with a good heel-toe gait although with a slightly pronated foot. He walked easily on his toes but had some difficulty walking on his heels on the right side. (having a tendency to evert the foot while heel walking). Exam of the back revealed no abnormal curvatures. There was no tenderness over the dorsal-lumbar spine. There was a pelvic obliquity to the right. There was good intraspinous motion on lateral as well as anteflexion. Neurological exam of the upper and lower extremity was essentially within normal limits.



Dr. Joyce medical report, Civil Service Commission  
7/6/73.

JOHN J. GIARDINO, M. D. AND  
STEPHEN T. JOYCE, M. D., P. C.

50 GATES CIRCLE  
BUFFALO, NEW YORK 14209

July 6, 1973

Anthony J. Colucci, Pres.  
CIVIL SERVICE COMM.

RE: JUDGE, Michael  
Pg. #2

There was a full range of motion of the hips. Measurement of the femora revealed them to be the same length. Measurement of the tibiae revealed a discrepancy of 1/2" -- the left being longer than the right. Measurement of the thighs revealed the circumferences to be equal, bilaterally. The calves -- the left calf was 1/4" larger than the right. There was a full range of motion of the knee. No instability of the capsular, cruciate, collateral ligaments. No abnormal excursion of the patellar-femoral joint. No tenderness around the patella retinaculum. Range of motion of the ankles -- on the right was 0 degrees of dorsiflexion to 30 degrees of plantar flexion; there was good subtalar motion; both feet were pronated although there was a loose flatfoot. Range of motion of the left ankle revealed dorsiflexion to 10 degrees, 30 degrees of plantar flexion and good subtalar motion; also a pronated foot was noted. Neuro-vascular status: The patient had palpable dorsalis pedis postero-tibial pulses. The over-all contour of the left tibia appeared to be grossly normal on palpation. There was a step-off at the juncture of the middle and distal thirds of the right tibia with a spur -- this was no tender. There was a broadened scar -- approximately 1/2" in diameter just distal to the step-off at the fracture of the right tibia. Stress of both tibiae revealed no pain, nor any gross instability. There was no adherence of the scar to the under-lying bone.

X-RAYS have been requested and as of today are not available for review although I think it most important that these are reviewed and we will send you a subsequent report upon doing so.

On checking the qualifications required for a position as a Community Peace Officer - I feel this man's disability at this time is essentially comprised of loss of dorsiflexion of his right ankle; some atrophy of his right calf and pronated feet; a step-off from the fracture which appears to be clinically well-healed. I think these defects are permanent although of a minimum nature.

Dr. Joyce medical report Civil Service Commission  
7/6/73.

JOHN J. GIARDINO, M. D. AND  
STEPHEN T. JOYCE, M. D., P. C.

80 GATES CIRCLE  
BUFFALO, NEW YORK 14209

July 6, 1973

Anthony J. Colucci, Pres.  
CIVIL SERVICE COMM.

RE: JUDGE, Michael  
Pg. #3

I do not think this would interfere with his performance as  
a Peace Officer.

I would like to add, however, that this conclusion is based  
on purely physical examination and I would very much like  
to have the opportunity to review the films and as I have  
noted - they have been requested - to exclude the possibility  
of any joint injuries which do not appear clinically to me or  
on review of his past history - to be the case. However, I  
will send a final report on the basis of this after review of  
the films.

Sincerely yours,

*Stephen T. Joyce M.D.*  
STEPHEN T. JOYCE, M. D.

STJ/gmr

Dictated but not read by Dr. Joyce----



Civil Service Commission letter to  
Dr. Joyce 6/27/73.



ANTHONY J. COLUCCI, President  
HERBERT L. BELLAMY  
FRANK A. STACHOWIAK  
Commissioners  
RAYMOND J. McMAHON, JR.,  
Secretary  
HOWARD J. GLEASON  
Examination Director (Emeritus)

**Municipal Civil Service Commission**

1001 City Hall, Niagara Square  
Buffalo, New York 14202

WILLIAM J. CLEARY  
Administrative Director

June 27, 1973

Dr. Stephen T. Joyce  
50 Gates Circle  
Buffalo, New York 14209

Re: Michael D. Judge

Dear Dr. Joyce:

Consistent with our phone conversation of even date, we confirm the appointment for the above named Community Peace Officer on Tuesday, July 3, 1973 at 10 a.m., St. Joseph's Intercommunity Hospital (Emergency Room), Harlem Road, Cheektowaga, New York. In this respect we enclose herewith the following medical data:

1. authorization for release of X-ray films, hospital records and/or medical reports
2. announcement for Community Peace Officer and, more particularly, attached addendum relating to physical and medical requirements
3. Dr. Hoffman's (treating physician) medical report to Richard D. Krieger, Esq. dated August 29, 1972
4. Mercy Hospital, South Buffalo, medical summary
5. Dr. Hoffman's more recent report dated June 16, 1973.

Civil Service Commission letter to  
Dr. Joyce 6/27/73.

Dr. Stephen T. Joyce

- 2 -

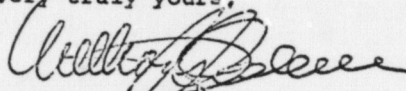
June 27, 1973

We are particularly concerned with your opinion as it relates to the degree of permanency and/or partial disability sustained by this patient resulting from the vehicular accident of February 27, 1972 measured on the basis of the medical and physical requirements for the position of Community Peace Officer (Patrolman) enclosed herewith.

As indicated to you, we enclose herewith a voucher covering the professional services rendered.

Thank you for your prompt reply.

Very truly yours,



Anthony J. Colucci  
President  
For the Commission

AJC:11  
encs.



## SPECIFICATION

PATROLMAN

GENERAL STATEMENT OF DUTIES: Has personal responsibility in an assigned district during a specific period for the enforcement of laws and ordinances and the protection of lives and property; assists in the investigation of criminal offenses and in the apprehension of criminals; does related work as required.

DISTINGUISHING FEATURES OF THE CLASS: This work consists primarily of routine patrol tasks. There is considerable independent responsibility for the exercise of sound judgment in emergencies. However, ordinary procedures and special assignments are usually carried out under immediate supervision.

EXAMPLES OF WORK: (Illustrative Only)

Patrols a specific district or beat on foot, on a motorcycle or in a radio cruising car;  
Checks doors and windows of unoccupied business and residential property;  
Investigates suspicious activities and makes arrests for violations of federal and state laws and local ordinances;  
Escorts prisoners to jail and to court, and has them booked on charges;  
Watches for and makes investigations of wanted and missing persons and stolen cars and property;  
Directs traffic and marks cars for overtime parking;  
Investigates accidents;  
Maintains order in crowds and attends parades and public gatherings;  
Answers questions for and directs the public;  
Receives complaints from the public;  
Makes daily reports of activities;  
Operates a patrol wagon;  
Occasionally performs minor clerical tasks at station house.

REQUIRED KNOWLEDGES, SKILLS AND ABILITIES: Good social and general intelligence; ability to be courteous and firm with the public; ability to understand and carry out complex oral and written directions; good knowledge of first aid methods; good judgment; ability to drive an automobile or motorcycle; some skill in the use of firearms; good powers of observation and memory; excellent moral character; physical strength and agility; good physical condition.

ACCEPTABLE EXPERIENCE AND TRAINING: Completion of a standard high school course; or an equivalent combination of experience and training sufficient to indicate the ability to do the work.

(over)

## Patrolman specifications.

SPECIAL REQUIREMENTS: Age: Candidates must be not less than 20 nor more than 29 years of age. (Sec. 58, New York State Civil Service Law)

Height and weight measurements in accordance with the following table:

| <u>Height</u> | <u>Minimum<br/>Weight</u> | <u>Maximum<br/>Weight</u> |
|---------------|---------------------------|---------------------------|
| 5' 9"         | 145 lbs.                  | 185 lbs.                  |
| 5' 10"        | 150 lbs.                  | 190 lbs.                  |
| 5' 11"        | 155 lbs.                  | 195 lbs.                  |
| 6' 0"         | 160 lbs.                  | 205 lbs.                  |
| 6' 1"         | 165 lbs.                  | 210 lbs.                  |
| 6' 2"         | 170 lbs.                  | 220 lbs.                  |
| 6' 3"         | 175 lbs.                  | 225 lbs.                  |
| 6' 4"         | 180 lbs.                  | 230 lbs.                  |

DATE: April 22, 1970



## Civil Service Announcement of Examination.

# OPPORTUNITY

## FOR PERMANENT POLICE CAREER-CITY OF BUFFALO

### COMMUNITY PEACE OFFICER

-- 50 VACANCIES

(No. 69805)

**\*Revised**

In accordance with the Rules for the Classified Civil Service of the City of Buffalo, appointment to the position of Community Peace Officer will be considered as a Trainee appointment leading to the position of Patrolman, and as such, the appointment of a Community Peace Officer shall be for a minimum period of 12 months. As soon as a vacancy exists thereafter he will, WITHOUT ANY ADDITIONAL WRITTEN EXAMINATION BUT SUBJECT TO A SATISFACTORY MEDICAL EXAMINATION AND THE FULFILLMENT OF THE EDUCATIONAL REQUIREMENT, AUTOMATICALLY BECOME A PROBATIONARY PATROLMAN.

**SALARY (7-1-71)** \$5,365 - \$7,665 a year

**\*FILING PERIOD** JANUARY 27, 1971 - MAY 17, 1971

Applications must be filed within the filing period on any business day before 4:00 P. M. in Room 1001 of the Civil Service Commission, City Hall, Buffalo, N. Y.

**\*DATE OF WRITTEN EXAMINATION** SATURDAY, JUNE 19, 1971

TIME AND PLACE OF THIS EXAMINATION WILL BE ANNOUNCED LATER.

**DUTIES** THE FOLLOWING DUTIES WILL BE PRIMARILY PERFORMED IN THE CORE AREA:  
Provides supervision to community sponsored youth activities; issues parking tags, assists in directing traffic; maintains files, makes simple file searches for identification purposes; assists in the clerical duties at a station house by filling out reports, keeping time and payroll records of personnel, assists in the preparation of data for prisoners, assists in the completion of accident reports; records violations against health and sanitary codes; makes records of property damage from weather or vandalism; may disband troublesome groups of youngsters around schools and playgrounds; assists in First Aid; operates short wave based radio; participates in the Dog Enumeration Census; does related work as required.

**MINIMUM QUALIFICATIONS:**

**AGE:** Candidates must be in their 20th year and must not have reached their 27th birthday on the day of the Written Examination, June 19, 1971. However, in accordance with Military Law, in determining this age requirement, time spent on duty in the armed forces of the United States, not exceeding 6 years, shall be subtracted from the age of any applicant who has passed his 27th birthday. Proof of age must be presented at time of certification for appointment.

**EDUCATION:** Candidates must be graduates of a standard Senior High School or possess a High School Equivalency Diploma or be a holder of a report from the United States armed forces certifying successful completion of the tests of General Educational Development, high school level.

**Note:** Candidates who do not possess the above educational requirement may take the examination and be appointed to the position of Community Peace Officer but shall not be eligible for appointment to Patrolman until they possess a High School Diploma or its equivalent. Appointees who at the end of their training period do not have the High School Diploma or its equivalent will be dismissed from their position.

**HEIGHT:** Not less than 5 feet 9 inches, nor more than 6 feet 4 inches.

**RESIDENCE:** Refer to reverse side for residency requirements.

**MEDICAL-PHYSICAL REQUIREMENTS:** Refer to attached sheet.

**\*SUBJECT OF EXAMINATION:** Written Examination  
Physical Agility Test

Candidates must participate in the written and physical agility test and receive an average score of 70% to be on the eligible list.

\*This examination is being prepared and rated by the New York State Department of Civil Service in accordance with Section 23-2 of the Civil Service Law, and the provisions of the New York State Civil Service Rules and Regulations dealing with the rating and review of examinations apply.

Rev. 1/11/71

## Civil Service Announcement of Examination.

ADVANTAGES OF EMPLOYMENT WITH THE CITY OF BUFFALO

|                                  |                                                               |
|----------------------------------|---------------------------------------------------------------|
| Promotional Career Opportunities | Fully Paid Blue Cross and Blue Shield                         |
| Job Security                     | Liberal Vacation and Sick Leave Policy                        |
| Annual Salary Increments         | Fully Paid Membership in the New York State Retirement System |

GENERAL INFORMATION

In order that the City of Buffalo programs be truly responsive to all the people of the City of Buffalo and effectively relate to the changing problems of the City, it is essential that minority group members be involved in positions filled through this examination. Therefore, in evaluating the education and experience of a candidate for positions filled through this examination, the individual's total life experience, as well as formal training, may be considered as a valuable asset to job performance. In such cases preference for appointment may be given to individuals who are successful in the examination and who have recognizable identification with Black or Spanish Speaking minority communities.

The written examination and the physical agility test will be comparable and similar to the examination administered for Patrolman.

The term of the eligible list resulting from this examination shall be for a period of at least one year.

Candidates must have no felony or misdemeanor convictions.

**RESIDENCE:** Applicants must be citizens of the United States and must have resided continuously within the City of Buffalo for two years immediately preceding the date of the examination.

**\*SUBJECT OF EXAMINATION:** Written test is designed to test for:

1. Ability to understand and interpret provisions of the New York State Penal Law, Code of Criminal Procedure and Vehicle and Traffic Law
2. Ability to exercise good judgment in the police field
3. Ability to prepare written reports

Candidates requesting Veteran Credits must present Military Discharge.

ANTHONY J. COLUCCI, President  
FRANK A. STACHOWIAK  
HERBERT L. BELLAMY  
Commissioners



[illegible]

Affirmation of Francis X. Murphy 9/14/74.

AFFIRMATION OF PLAINTIFF'S ATTORNEY UNDER PENALTY  
OF PERJURY IN LIEU OF AFFIDAVIT PURSUANT TO CPLR 2106

I am attorney of record for the plaintiff, Michael Judge.  
In substantiation of certain of the statements of Michael Judge  
in his affidavit of September 14, 1974 the following is submitted:

Annexed hereto is letter dated May 23, 1973 to Richard  
Krieger from the Municipal Civil Service Commission. Mr Krieger  
was Mr Judge's attorney on his accident case. The letter states  
in pertinent part:

"He is tentatively eligibly for appointment as a  
Patrolman, and at the time of his preliminary medical  
screening examination, Mr Judge failed to meet the  
height requirement of 5 ft. 9 ins. At that time Mr  
Judge related an incident that occurred on the above  
captioned date at which time he sustained severe  
and compound fractures of both limbs. "

and requesting copies of doctor and hospital reports and records.

Annexed hereto is the letter dated May 31, 1973 enclosing  
the requested hospital records and doctor reports from his  
attorney to the Commission.

The foregoing letter from the Commission establishes the  
Commission's admission that at the time of his medical examination  
Mr Judge at that time related the fact of fracture of both legs.  
It is also a documentary fact that at the time of the actual  
physical examination by the Commission's Physician on January  
24, 1973 the examining physician had marked upon his medical  
report opposite "arms & legs" the symbol "n" which obviously  
means normal. This in the face of the admission that Mr Judge  
had revealed to him the fact of a prior fracture of both legs.  
The Commission's records and Mr Judge's narrative of the medical  
examination in his affidavit of this date are identical.



Affirmation of Francis X. Murphy 9/14/74.

On September 13, 1973 I visited the office of the Municipal Civil Service Commission and conferred with William Cleary its Administrative Director. I showed him exhibit 2 attached to his affidavit to this court dated July 24, 1974, the report of the medical exam by Dr. Birchette in January of 1973. I asked him if there were in existence a copy of the medical examination exactly as it was on January 31, 1973 when the Civil Service Commission adopted its initial order rejecting Mr. Judge's appointment on the ground of height alone. He told me that exhibit 2 is the only report of the examination of January 26, 1973 and that the examining physician had added the REJECT language thereupon following receipt of the materials from Mr. Judge's accident attorney and its evaluation.

Mr. Cleary confirmed that the examination for C.P.O. was in two parts, a written examination and an agility test and the mark was the average of these two tests. I asked him how the candidate would know the weight to be attached to each test and he stated that where no weights are stated it is understood that they are equally weighted and that the mark is the arithmetic average of the two tests.

It is at last quite clear that the passing of an agility test with a passing mark of 70 is not a sine qua non to appointment. A below 70 mark upon the agility test can be overborne by a higher than 70 mark upon the written test and vice versa. The sine qua nons were:

- (1) a 70 average on the combined written and agility test
- (2) passing of a satisfactory medical examination.

Satisfactory passing of the physical examination was established:

- (1) by the absence of any subnormal specifications on the physical examination of January 24, 1973 except the constitutionally prohibited specification of height.

Affirmation of Francis X. Murphy 9/14/74.

(2)by the passing of a physical examination by Dr Stephen Joyce, an independent physician retained by the Civil Service Commission itself after the commencement of this action.

There is not a shred of doubt but that the actual reason for non appointment was height and height alone. That reason for non appointment became not available to the City of Buffalo, the recipient of funds from the Department of Justice, upon the coming out of that department's regulations in March of 1973.

Once those regulations came out, before this action was commenced, the City of Buffalo, which had denied to Mr Judge an appointment solely on the ground of height, had the obligation to obey the regulation of the Department of Justice which was providing the funds for Mr Judge's job upon the promise of the city that it would abide by the Department of Justice regulations, and give him that job.

Once those regulations came out the city of Buffalo could no longer use height as a ground for non appointment. Because it did and has so used it Mr Judge is absolutely entitled to his job under the Federal regulation.

September 14, 1974

*Francis X. Murphy*



## Letter Civil Service Commission to Richard Krieger.



ANTHONY J. COLUCCI, President  
 HERBERT L. BELLAMY  
 FRANK A. STACHOWIAK  
 Commissioners  
 RAYMOND J. McMAHON, JR.,  
 Secretary  
 HOWARD J. GLEASON  
 Examination Director (Emeritus)

## Municipal Civil Service Commission

1001 City Hall, Niagara Square  
 Buffalo, New York 14202

WILLIAM J. CLEARY  
 Administrative Director

May 23, 1973

Richard D. Krieger, Esq.  
 Ellicott Square Building  
 Main Street  
 Buffalo, New York 14202

Re: Michael D. Judge  
 D/A 2/29/72

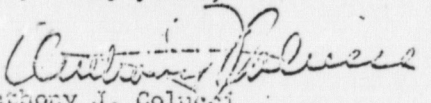
Dear Mr. Krieger:

The above named client is presently employed by the City of Buffalo as a Community Peace Officer. He is tentatively eligible for appointment as a Patrolman, and at the time of his preliminary medical screening examination, Mr. Judge failed to meet the height requirement of 5 ft. 9 ins. At that time Mr. Judge related an incident that occurred on the above captioned date at which time he sustained severe and compound fractures of both limbs.

We are desirous of obtaining from you any and all pertinent reports received from his treating physicians, Drs. Hoffman and Cisek, along with any and all copies of medical and/or hospital records available.

For such purposes we enclose herewith a recent authorization to release this information to our office. Thank you for your prompt attention.

Very truly yours,

  
 Anthony J. Colucci  
 President  
 For the Commission

AJC:11  
 enc.

Answering letter to Civil Service Commission, 5/31/73.

KRIEGER AND GRAFFEO  
ATTORNEYS AND COUNSELORS AT LAW  
501 ELLICOTT SQUARE  
BUFFALO, NEW YORK 14203

RICHARD D. KRIEGER  
SEBASTIAN P. GRAFFEO

6-6-73  
on file  
TELEPHONE 888-0012

May 31, 1973

Re: Michael Judge

Municipal Civil Service Commission  
1001 City Hall  
Buffalo, New York 14202

Attention: Anthony J. Colucci

Dear Mr. Colucci:

Enclosed please find hospital records and report  
of Dr. Walter Hoffman, orthopedic surgeon, who attended  
Mr. Judge.

If I can be of any other help, please let me know.

Very truly yours,

KRIEGER AND GRAFFEO

*Sebastian P. Graffeo*  
Sebastian P. Graffeo

SPG/cs

Encs.

3 JUN 1 AM 13:22  
RECEIVED  
CIVIL SERVICE COMMISSION



Decision, Granting City of Buffalo summary judgment.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MICHAEL JUDGE,

Plaintiff

v.

Civ-1973-307

CITY OF BUFFALO,

Defendant

---

APPEARANCES: FRANCIS X. MURPHY, ESQ.  
Buffalo, New York, for Plaintiff.

LESLIE G. POSCHIO, ESQ., Corporation  
Counsel of the City of Buffalo  
(JAMES J. McLOUGHLIN, ESQ., Assistant  
Corporation Counsel, of counsel)  
Buffalo, New York, for Defendant.

The plaintiff seeks a judgment directing the City of Buffalo to appoint him to the position of patrolman, claiming that the City's refusal to do so is based upon his inability to meet a height standard, which violates his rights under the Constitution and laws of the United States and also violates his rights under a contract between the City of Buffalo and the United States. He alleges jurisdiction under 28 U.S.C.

Decision 4, Granting City of Buffalo summary judgment.

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§ 1343(3) and 28 U.S.C. § 1331. Both sides have filed affidavits and have moved for summary judgment.

In May 1971 the City of Buffalo entered into an agreement with the State of New York Office of Crime Control Planning to set up a Community Peace Officer program to be funded by moneys provided to the state through the Federal Law Enforcement Assistance Administration (42 U.S.C. § 3701, et seq.). The program was established to overcome the lack of minority group representation on the City's Police Force and to improve Police-community relations. Eventually fifty candidates who qualified as Community Peace Officers were to attend the Police Academy for training and after the completion of one year's service in clerical and administrative capacities within the department, were to be appointed as patrolmen as positions opened, ahead of those who were on the regular eligible list for patrolmen. The rules of the Municipal Civil Service Commission were amended to include appropriate coverage for the position



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of Community Peace Officer. Under the rule, after the Community Peace Officer completed his probationary term of one year, he would be appointed to a permanent vacancy as the position opened provided that he passed a satisfactory medical examination. At the time the Community Peace Officer Program was instituted and when this action was commenced, the Civil Service Commission rules provided that candidates for a position of patrolman be at least five feet nine inches tall. After the commencement of this action, the Commission reduced the requirement to five feet seven inches. Plaintiff Michael Judge, who was white, was recruited, passed the written and physical examination and was appointed a Community Peace Officer on December 16, 1971.

On February 27, 1972, he was seriously injured in an off-duty automobile accident. An operation on both legs resulted in shortening and a loss of his height from about five feet nine inches to five feet seven inches. Plaintiff was off duty from February 27, 1972,

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until August 24, 1972, when he returned to light duty. On January 24, 1973, when plaintiff was examined for the position of patrolman by the Commission's physician, he failed to disclose that he had been involved in an automobile accident and that he had undergone the injuries to his legs and the subsequent operation. However, because the doctor's report revealed that he was five feet seven inches and he could not have been initially accepted in 1971 unless he was at least five feet nine inches tall, the Civil Service Commission undertook an investigation to determine the reason for the discrepancy. The police administrator informed the Commission about the automobile accident of February 1972 and the injuries which resulted from it. On May 23, 1973, plaintiff appeared before the Commission informally and gave permission for an examination of his hospital records and the reports of his attending physicians concerning his injuries. About June 1, 1973, the physician who examined the reports recommended that plaintiff be rejected. On June 6, 1973, the Commission determined



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that he was ineligible for certification due to his physical condition revealed by the examining physician's report. On June 27, 1973, the Commission further explained that its determination not to appoint Mr. Judge was based upon its concern that he did not have the physical ability to carry on the job of patrolman and that his height was not a factor in the determination.

The action in this court was instituted on June 27, 1973. Following that, upon plaintiff's request, the Commission had him examined by another physician who reported that he did not believe that Judge's physical condition would interfere with his performance as a Peace Officer. Nevertheless, after receiving this report, the Commission adhered to its original determination not to certify. However, on October 31, 1973, the Commission made arrangements to have him retake the agility test which he had taken and successfully passed in 1971 and also agreed to certify him as eligible for appointment if he passed the agility test. On November 20, 1973, the scheduled date for the test, the

Decision, Granting City of Buffalo summary judgment.

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plaintiff's attorney was advised that if plaintiff did not feel up to taking the test on that date, he would be permitted to postpone it until such time as he felt ready. Plaintiff took the test but failed to pass it. On December 5, 1973, the Commission again determined that the plaintiff did not meet the physical qualifications for appointment to the position of patrolman and informed plaintiff of that fact. On December 18, 1973, the Commission reduced the minimum height requirement for candidates for the position of patrolman from five feet nine inches to five feet seven inches and has certified to the court that this decision was not related to this case in any way.

The history of plaintiff's injury, examination and failure to pass the agility test are not directly controverted by the plaintiff. His argument that defendant's refusal to certify him for appointment as patrolman was based upon his failure to meet the height requirement of five feet nine inches is not supported by any of the documents. Therefore, his position that



Decision, Granting City of Buffalo summary judgment.

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Subdivision 4 of the LEAA Guidelines, which prohibits the use of minimum height requirements for women and persons of certain national origins, works an unconstitutional disadvantage to him need not be considered. Because the evidence in this case clearly indicates that the City's refusal to name the plaintiff to the position of police officer was based upon his failure to pass the agility test as part of the medical examination, the court will not pass upon plaintiff's argument that the Guidelines unconstitutionally discriminate against plaintiff.

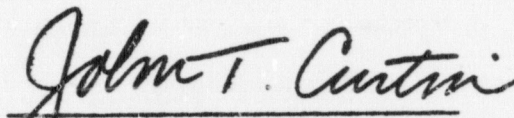
Further, the plaintiff is a white male. He has not placed himself within the zone of interests which the statutes and guidelines are designed to protect. Because there is clearly no violation of plaintiff's civil rights, there is no federal jurisdiction. Oklahoma High School Athletic Association v. BRY, 321 F.2d 269 (10th Cir. 1963); Data Processing Service Corp. v. Camp, 397 U.S. 150 (1970).

Decision, Granting City of Buffalo summary judgment.

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The motion of defendant for summary judgment is granted. The Clerk is directed to enter judgment dismissing the complaint.

So ordered.

  
JOHN T. CURTIN  
United States District Judge

DATED: April 23, 1975



Judgment appealed from.

JUDGMENT ON DECISION BY THE COURT

CIV 32 (7-63)

## United States District Court

FOR THE

WESTERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 1973-307

MICHAEL JUDGE

vs.

CITY OF BUFFALO

JUDGMENT

This action came on for ~~XXXX~~ (hearing) before the Court, Honorable Judge Curtin  
 , United States District Judge, presiding, and the issues having been duly ~~tried~~  
 (heard) and a decision having been duly rendered,

It is Ordered and Adjudged the plaintiff, Michael Judge, take nothing  
 and that the action be dismissed.

Dated at Buffalo, New York  
 of April , 19 75.

, this 23rd day

JOHN K. ADAMS

JOHN K. ADAMS  
 Clerk of Court

## AFFIDAVIT OF SERVICE BY MAIL

State of New York ) RE: Michael Judge  
 County of Genesee ) ss.: v  
 City of Batavia ) City Buffalo  
 Docket No. 75-7314

I, Leslie R. Johnson being  
 duly sworn, say: I am over eighteen years of age  
 and an employee of the Batavia Times Publishing  
 Company, Batavia, New York.

On the 24 day of June, 19 75  
 I mailed 2 copies of a printed Appendix in  
 the above case, in a sealed, postpaid wrapper, to:

Leslie G. Foschio, Esq.

Corporation Counsel

City of Buffalo

City Hall

Buffalo, New York 14202

at the First Class Post Office in Batavia, New  
 York. The package was mailed Special Delivery at  
 about 4:00 P.M. on said date at the request of:

Francis X. Murphy, Esq.

914 Abbott Road, Buffalo, New York 14220

Leslie R. Johnson

Sworn to before me this

24 day of June, 19 75

Monica Shaw

MONICA SHAW  
 NOTARY PUBLIC, State of N.Y., Genesee County  
 My Commission Expires March 30, 1977